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LEGISLATIVE HISTORY
Public Law 91-166
H. R. 15209

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INDEX AND SUMMARY OF H. R. 15209

- Dec. 11, 1969 House Appropriations Committee reported H. R. 15209. H. Report No. 91-747. Print of bill and report.
House passed H. R. 15209 with amendment.
- Dec. 12, 1969 H. R. 15209 was referred to Senate Appropriations Committee. Print of bill as referred.
- Dec. 17, 1969 Senate committee reported H. R. 15209 with amendments. S. Report No. 91-616. Print of bill and report.
- Dec. 18, 1969 Senate passed H. R. 15209 with amendments.
Senate conferees were appointed.
- Dec. 19, 1969 House conferees were appointed.
- Dec. 20, 1969 House received conference report on H. R. 15209. H. Report No. 91-780. Print of report.
- Dec. 22, 1969 Both Houses agreed to conference report.
- Dec. 26, 1969 Approved: Public Law 91-166.

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of Dec. 11, 1969
91st-1st No. 206

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HIGHLIGHTS: House passed supplemental appropriation bill.

HOUSE

1. SUPPLEMENTAL APPROPRIATIONS. Passed with amendment H. R. 15209, the supplemental appropriation bill 1970. This bill contains an item of \$3.7 million for Flood Prevention, Soil Conservation Service, to cover damage caused by Hurricane Camille (pp. H12185-91). The Appropriations Committee had earlier reported the bill without amendment (H. Rept. 91-747)(p. H12237).

2. FLOOD CONTROL. The Public Works Committee reported without amendment H. R. 15166, to authorize additional appropriations for prosecution of projects in certain comprehensive river basin plans for flood control and navigation (H. Rept. 91-748). p. H12237
3. TAX REFORM. Conferees were appointed on H. R. 13270, the tax reform bill. pp. H12192-4.
4. POVERTY PROGRAM. Agreed to a resolution to provide for consideration of H. R. 12321, to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and the language which will be offered as a substitute is printed in the Record. pp. H12194-9
5. BUILDINGS. The Public Works Committee voted to report (but did not actually report) H. R. 14464, to amend the act of Aug. 12, 1968, to insure that certain facilities constructed under authority of Federal law are designed and constructed to be accessible to the physically handicapped. p. D1198
6. OPINION POLL. Rep. Wiggins inserted the results of an opinion poll of his Calif. constituents which contains items of interest to this Department. pp. H12199-200
7. ADMINISTRATION PERSONNEL; CABINET OFFICIALS. Rep. Taft praised the extent to which this Administration is utilizing "the talents of outstanding and respected individuals from academic life", and mentioned officers in this Department. pp. H12200-2
8. IMPORTS; EMPLOYMENT. Rep. Boland spoke on the effect of imports on the domestic economy and said that many industries and millions of working men and women are threatened by a variety of imports and that it has reached alarming proportions. pp. H12232-4

SENATE

9. CIVIL SERVICE. Passed as reported H. R. 9233, to increase the scope of the reimbursable services for which the Civil Service Commission Revolving Fund may be used. pp. S16403-4
10. APPROPRIATIONS. Agreed to conference report on H. R. 13763, the legislative branch appropriations bill, 1970. This bill will now be sent to the President. pp. S16410-5
Passed with amendments H. R. 14916, the District of Columbia appropriations bill, 1970. pp. S16415-29
11. TAX REFORM. Passed, 69-22, H. R. 13270, the tax reform bill. Conferees were appointed. pp. S16435-60
12. HUNGER; FOOD STAMPS. Sen. Javits expressed concern over the possibility that the problem of hunger might become a partisan issue and paid tribute to Secretary Hardin "that he did not let the bureaucracy block action." Sen. McGovern responded with assurances of continued bipartisan action, and inserted correspondence from this Department and a newspaper editorial. pp. S16429-35

SUPPLEMENTAL APPROPRIATION BILL, 1970

DECEMBER 11, 1969.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MAHON, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 15209]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

SUMMARY OF THE BILL

The bill is divided into 10 chapters:

	Report page
I—Agriculture.....	5
II—Independent offices-H.U.D.....	7
III—Interior.....	10
IV—Labor-HEW.....	16
V—Legislative.....	18
VI—State, Justice, Commerce and Judiciary.....	20
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VIII—Treasury, Post Office, and Executive Office.....	26
IX—Claims and judgments.....	30
X—General provisions.....	32

The Committee considered estimates for new budget (obligational) authority aggregating \$298,547,261 as contained in House Document No. 91-199, of November 24, and Senate Document No. 91-33, of September 15, the latter containing an estimate of \$8,380,000 not previ-

ously acted upon. The Committee recommends a total of \$235,057,761 in the accompanying bill, a reduction of \$63,489,500, or about 21 percent.

In addition to the new budget authority requested and recommended, there is one increase in administrative expense limitation, chargeable to funds previously available, for \$211,000, requested and approved.

Two transfers requested between appropriations, totaling \$830,000, have been cut by \$50,000.

Details concerning these items are in the two documents and in the printed hearings. Committee actions are explained in the applicable sections of this report.

Of the \$235,057,761 new budget authority in the bill, \$175,000,000, or about 75 percent of the total, is for disaster relief loans under the Small Business Administration to supply replacement of funds drawn down largely on account of the devastation caused by Hurricane Camille. There are, in other accounts in the bill, about \$7,958,000 also associated with Hurricane Camille damage in August, 1969.

\$15,323,261, or about 6 percent of the total, is in the bill for claims and judgments.

Another 4 percent—\$9,350,000—is in the bill for law enforcement in the Treasury Department, primarily in connection with control of smuggling of marihuana and narcotics.

\$7,500,000, about 3 percent of the total of the bill, is for additional construction of the John F. Kennedy Center for the Performing Arts.

\$13,500,000, or nearly 6 percent of the total, is for accelerated development of the Trust Territory of the Pacific Islands and for Indian education and welfare services.

APPROXIMATE EFFECT ON 1970 EXPENDITURES (BUDGET OUTLAYS)

It is the Committee's tentative estimate that the net reduction of \$63,489,500 in new budget (obligational) authority requests will translate into a net reduction of approximately \$5,670,000 in budgeted outlays projected for fiscal year 1970. The reduction of \$50,000,000 in new budget (obligational) authority for the disaster loan fund of the Small Business Administration would reduce the loan carry-over balance at the end of the fiscal year and thus should not result in an actual reduction of budgeted 1970 expenditures.

TABULAR SUMMARY

The following table summarizes the budget requests and amounts recommended in the bill:

**COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL**

Report page No.	Chapter No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
5	I	Agriculture:			
		New budget (obligational) authority-----	\$3, 700, 000	\$3, 700, 000	-----
		<i>Limitation on administrative expenses</i> -----	(211, 000)	(211, 000)	-----
7	II	Independent Offices--HUD:			
		New budget (obligational) authority-----	3, 275, 000	1, 125, 000	-\$2, 150, 000
		<i>By transfer</i> -----	(430, 000)	(430, 000)	-----
10	III	Interior: New budget (obligational) authority-----	27, 071, 000	25, 391, 000	-1, 680, 000
16	IV	Labor-Health, Education, and Welfare: New budget (obligational) authority-----		314, 000	+314, 000
18	V	Legislative: New budget (obligational) authority-----		42, 500	+42, 500
20	VI	State, Justice, Commerce, and Judiciary:			
		New budget (obligational) authority-----	236, 373, 000	177, 427, 000	-58, 946, 000
		<i>By transfer</i> -----	(400, 000)	(350, 000)	(-50, 000)
24	VII	Transportation: New budget (obligational) authority-----	1, 500, 000	1, 200, 000	-300, 000

**COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL—Continued**

Report page No.	Chapter No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
26	VIII	Treasury-Post Office: New budget (obligational) authority-	11, 305, 000	10, 535, 000	- 770, 000
30	IX	Claims and judgments: New budget (obligational) authority-----	15, 323, 261	15, 323, 261	-----
		Grand total:			
		New budget (obligational) authority-----	298, 547, 261	235, 057, 761	- 63, 489, 500
		<i>Limitation on administrative expenses</i> -----	(211, 000)	(211, 000)	-----
		<i>By transfer</i> -----	(830, 000)	(780, 000)	(- 50, 000)

CHAPTER I

SUBCOMMITTEE ON DEPARTMENT OF AGRICULTURE AND RELATED AGENCIES

JAMIE L. WHITTEN, Mississippi, *Chairman*

WILLIAM H. NATCHER, KENTUCKY

W. R. HULL, JR., MISSOURI

GEORGE E. SHIPLEY, ILLINOIS

FRANK E. EVANS, COLORADO

ODIN LANGEN, MINNESOTA

ROBERT H. MICHEL, ILLINOIS

JACK EDWARDS, ALABAMA

DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

FLOOD PREVENTION

The Committee recommends the full supplemental estimate of \$3,700,000 for installing emergency measures for runoff retardation and soil erosion prevention in Virginia as a direct result of floods caused by Hurricane Camille in August, 1969. Flood damage was catastrophic: most recent figures show over 150 people dead or missing and property damage exceeding \$113,000,000. Both the Governor of Virginia and the President have declared an emergency in Virginia.

Approximately \$600,000 has already been made available for emergency activities authorized by section 216 of the Flood Control Act of 1950. The supplemental of \$3,700,000 is needed for additional emergency measures to reduce the threat of potential hazards to life and property.

The Committee takes note that this appropriation item covers only the emergency activities of the Soil Conservation Service in this one particular area. Hurricane Camille spread devastation throughout several states; and many Federal, State, and local agencies, and private organizations have been working at capacity to assist storm victims and to clear, repair, and restore areas damaged by the storm.

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

The Committee recommends the estimate of \$211,000. The expenses of the Farm Credit Administration are paid from funds assessed from farm credit banks and associations that make loans to farmers and their cooperatives. This estimate has the approval of the Federal Farm Credit Board and has the support of the banks and associations in the Farm Credit system. It is recommended to enable the Farm Credit Administration to adequately supervise the growing credit programs of the member banks. It is intended that these additional funds will permit the Farm Credit Administration to continue its long and excellent record of effective and efficient management.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL

H. Doc. No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
	CHAPTER I			
	DEPARTMENT OF AGRICULTURE			
	SOIL CONSERVATION SERVICE			
91-199	Flood prevention.....	\$3, 700, 000	\$3, 700, 000	-----
	FARM CREDIT ADMINISTRATION			
	<i>Limitation on administrative expenses</i>	(211, 000)	(211, 000)	-----
91-199	Total, chapter I.....	3, 700, 000	3, 700, 000	-----

CHAPTER II

SUBCOMMITTEE ON INDEPENDENT OFFICES AND DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENTJOE L. EVINS, Tennessee, *Chairman*EDWARD P. BOLAND, MASSA-
CHUSETTS

GEORGE E. SHIPLEY, ILLINOIS

ROBERT N. GIAIMO, CONNECTICUT

JOHN O. MARSH, JR., VIRGINIA

DAVID PRYOR, ARKANSAS

CHARLES R. JONAS, NORTH
CAROLINA

LOUIS C. WYMAN, NEW HAMPSHIRE

BURT L. TALCOTT, CALIFORNIA

JOSEPH M. McDADE, PENNSYLVANIA

INDEPENDENT OFFICES

CIVIL SERVICE COMMISSION

SALARIES AND EXPENSES

The budget estimate proposes the transfer of \$430,000 from trust funds for administrative expenses necessary to carry out provisions of the Civil Service Retirement Amendments of 1969 (Public Law 91-93, approved October 20, 1969), which the Committee recommends.

This recent legislation amends the civil service retirement and disability benefits program to provide sounder financing for the civil service retirement and disability fund. The Committee has been urging this for some time.

The law also provides a number of benefit liberalizations requiring additional administrative expenses to permit recomputation of annuities for cost of living adjustments, crediting unused sick leave where applicable, processing an estimated 21,000 additional annuity claims for recent retirements, and to implement various other features covered in the law.

FEDERAL LABOR RELATIONS COUNCIL, SALARIES AND EXPENSES

On October 29, 1969, the President issued Executive Order 11491, which is intended to establish more effective labor-management relations in the Federal Service. It provides for a Federal Labor Relations Council, composed of the Chairman of the Civil Service Commission, the Secretary of Labor, an official of the Executive Office of the President, and such other officials of the Executive Branch as the President may designate from time to time. A Federal Service Impasses Panel is established as an agency within the Council to consider and resolve impasses between labor organizations and agency management, including arbitration or third-party fact finding with recommendations when necessary.

The Committee recommends an appropriation of \$250,000 to provide services and staff assistance to the Council, which is \$150,000 less than the budget estimate. The Council is scheduled to begin functioning on January 1, 1970. This will permit operations to begin in the current fiscal year.

COMMISSION ON GOVERNMENT PROCUREMENT

SALARIES AND EXPENSES

The Committee recommends an appropriation of \$500,000 for the Commission on Government Procurement, which was authorized by Public Law 91-129, approved November 26, 1969. This is \$2,000,000 less than the budget estimate. The objective of the Commission is to undertake a comprehensive review and analysis of Government procurement statutes, policies and practices with a view to recommending improvements.

The Committee is of the opinion that substantial savings can be realized from the studies and investigations to be made by this Commission. Maximum results are most likely to be achieved pursuant to a well-thought-out plan for its total task. The funds recommended in the bill will enable the Commission to develop its plan and begin its investigations, and a further request for funds will be considered as soon as the Commission has developed the details of its specific program and funding requirements for presentation to the Congress.

The dollar value of Federal procurement for goods and services has increased from \$9 billion in 1949 to \$55 billion in 1969, an increase of over 500 percent. There has been no comprehensive review of procurement since the first Hoover Commission, which led to the enactment of the Federal Property and Administrative Services Act in 1949. The Commission's review is therefore most timely.

NATIONAL COMMISSION ON CONSUMER FINANCE

SALARIES AND EXPENSES

The Committee recommends the budget estimate of \$375,000 to initiate the work of the National Commission on Consumer Finance, which is authorized by Title IV of the Consumer Credit Protection Act of 1968.

The Commission will study and appraise the functioning and structure of the consumer finance industry. Among the areas to be covered are the adequacy of existing arrangements to provide consumer credit at reasonable rates, the adequacy of existing supervisory and regulatory mechanisms to protect the public from unfair practices, and the desirability of Federal chartering of consumer finance companies.

**COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL**

H. Doc. No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
	CHAPTER II			
	INDEPENDENT OFFICES			
	CIVIL SERVICE COMMISSION			
91-199	Salaries and expenses (<i>by transfer</i>)-----	(\$430, 000)	(\$430, 000)	-----
91-199	Federal Labor Relations Council, salaries and expenses-----	400, 000	250, 000	—\$150, 000
	COMMISSION ON GOVERNMENT PROCUREMENT			
91-199	Salaries and expenses-----	2, 500, 000	500, 000	—2, 000, 000
	NATIONAL COMMISSION ON CONSUMER FINANCE			
91-199	Salaries and expenses-----	375, 000	375, 000	-----
	Total, chapter II-----	3, 275, 000	1, 125, 000	—2, 150, 000

CHAPTER III

SUBCOMMITTEE ON DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES

JULIA BUTLER HANSEN, Washington, *Chairman*MICHAEL J. KIRWAN, OHIO
JOHN O. MARSH, JR., VIRGINIA
JOHN J. FLYNT, JR., GEORGIABEN REIFEL, SOUTH DAKOTA
JOSEPH M. McDADE,
PENNSYLVANIA
WENDELL WYATT, OREGON

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

The Committee recommends an appropriation of \$1,000,000, a reduction of \$500,000 below the budget request, for initial cost of permit issuance and first-year supervision of the proposed oil pipeline across Alaska.

Testimony developed during the hearings created grave concern on the part of the Committee with regard to the approach being taken by Departmental officials in connection with their responsibilities relative to the construction of the proposed Trans-Alaska Pipeline. The Committee is of the opinion that in many respects the submission of the supplemental fund request for the Bureau of Land Management, the Geological Survey, and the Bureau of Sport Fisheries and Wildlife totaling \$2,405,000 was premature.

First of all, the very serious and involved problem of native land claims which has been under consideration by the Congress for several months has not been resolved. None of the testimony given during the hearing reflected the interrelation and probable influence which the granting of the pipeline right-of-way might have in the final settlement of native land claims.

In this same connection, no definite action has been taken by the Congress or the Secretary to date with regard to Secretary Hickel's official notification of his intention to exempt the pipeline right-of-way acreage from Public Land Order 4582 issued January 17, 1969. By law, if this exemption is not obtained, the necessary permit for the right-of-way cannot be issued.

The Committee was surprised and disappointed to learn during the course of the hearings that little, if any serious consideration had been given by Departmental officials to assessing private oil companies who will build the pipeline for additional costs to be incurred by the Department of the Interior directly as a result of the pipeline construction. To repeated questions propounded by the Committee in this connection the answer was "The solicitor has the legality of such action under consideration". No assurance was given the Committee as to when the Solicitor might eventually reach a decision. It should be pointed out that when Departmental officials appeared before the

House Committee on Merchant Marine and Fisheries on October 31, 1969, the Under Secretary of the Interior in a direct response to a question by a member of that committee agreed to give further consideration to the matter. (See pp. 656-657 of printed hearings on this bill.)

The Committee strongly feels that any costs incurred by the Department of the Interior for inspection and protection of American natural resources in Alaska are properly chargeable to those oil companies constructing the pipeline, and the Committee directs that in negotiations for issuance of rights-of-way permits, adequate fees and/or reimbursement be charged for recovery of expenses incurred by the Department which are directly attributable to its immediate and continuing supervision of the pipeline.

The Committee was impressed by the myriad of possibilities, both known and unknown, that the ecology of this area could be imperiled as a result of the pipeline construction. The Committee therefore looks to the responsible officials in the Department of the Interior to enforce every reasonable precaution to protect all natural resources of this area from destruction.

Because of the above-described circumstances the Committee was reluctant to recommend funds for this purpose at this time. However, in view of the overall situation, and the urgent necessity for safekeeping the fragile ecology of this region, it was deemed advisable to make funds available in order that there would be no reason from an appropriation standpoint for the best interest of the Federal government not being adequately protected.

The Committee has recommended appropriations in the order of priority. It is first necessary for the Geological Survey to determine the geological feasibility and precise location of the pipeline; after which the Bureau of Sport Fisheries and Wildlife will be responsible for the placement of the pipeline from the standpoint of wildlife and sport fish. The third priority is for the issuance of the rights-of-way permits by the Bureau of Land Management after the previous determinations have been made.

In spite of the fact that Alaska has been heavily dependent upon commercial fisheries as an economical resource, and that the international boundaries of several nations are also related to the well-being of this resource management, the Committee was appalled and surprised that representatives of the Bureau of Commercial Fisheries did not attend the hearings to present the information necessary for total evaluation of the effects construction of the pipeline will have on this natural resource.

BUREAU OF INDIAN AFFAIRS

EDUCATION AND WELFARE SERVICES

The Committee recommends an appropriation of \$6,000,000, the budget request, to provide for unanticipated increases in the average monthly caseload and the size of payment per person in the general

assistance and child welfare programs of the Bureau of Indian Affairs.

OFFICE OF TERRITORIES

TRUST TERRITORY OF THE PACIFIC ISLANDS

The Committee recommends an appropriation of \$7,500,000, a reduction of \$880,000 below the budget request, to provide for the accelerated development of the Trust Territory of the Pacific Islands.

GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

The Committee recommends an appropriation of \$700,000, the budget request, to provide for topographic mapping, geologic investigations, and hydrologic studies in connection with the proposed oil pipeline across Alaska.

BUREAU OF SPORT FISHERIES AND WILDLIFE

MANAGEMENT AND INVESTIGATIONS OF RESOURCES

The Committee recommends an appropriation of \$205,000, the budget request, for investigations of the effect on fish and wildlife resources of the proposed oil pipeline and related facilities to be developed in Alaska.

CONSTRUCTION

The Committee recommends an appropriation of \$2,200,000, a reduction of \$300,000 below the budget request, to provide for the most urgently needed repair and rehabilitation of facilities at fish hatcheries and wildlife refuges which have been damaged by storms, fires, and floods. Hurricane Camille, a catastrophic fire in Alaska, and last winter's heavy snow packs and fast runoff in the Upper Great Plains States were the main causes of the damage.

RELATED AGENCIES

NATIONAL COUNCIL ON INDIAN OPPORTUNITY

SALARIES AND EXPENSES

The Committee recommends an appropriation of \$286,000, the budget request, to provide for the operation of the National Council on Indian Opportunity. The purpose of the Council is to encourage coordination and improvement of Federal programs designed to benefit the Indian population.

SMITHSONIAN INSTITUTION

THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

The Committee recommends an appropriation of not to exceed \$7,500,000, the budget request, for completion of construction of the Center, as authorized by Public Law 91-90 enacted October 17, 1969. Funds provided in this appropriation are available to the extent they are matched by private contributions.

Testimony developed during the hearings indicated that the additional funds are required for the completion of the Center, and are needed immediately if serious interruption in the construction schedule is to be avoided. The Committee was informed that any stoppage of construction at this phase of the project would add about six to eight million dollars to the cost of the building. Overall construction of the project is now 61 percent complete.

**COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL**

H. Doc. No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
	CHAPTER III			
	DEPARTMENT OF THE INTERIOR			
	PUBLIC LAND MANAGEMENT			
	BUREAU OF LAND MANAGEMENT			
91-199	Management of lands and resources.....	\$1, 500, 000	\$1, 000, 000	—\$500, 000
	BUREAU OF INDIAN AFFAIRS			
91-199	Education and welfare services.....	6, 000, 000	6, 000, 000	-----
	OFFICE OF TERRITORIES			
Senate Doc. 91-33	Trust Territory of the Pacific Islands.....	8, 380, 000	7, 500, 000	—880, 000
	MINERAL RESOURCES			
	GEOLOGICAL SURVEY			
91-199	Surveys, investigations, and research.....	700, 000	700, 000	-----

FISH AND WILDLIFE, PARKS, AND MARINE RESOURCES			
BUREAU OF SPORT FISHERIES AND WILDLIFE			
91-199	Management and investigations of resources-----	205, 000	205, 000
91-199	Construction-----	2, 500, 000	2, 200, 000
	Total, Bureau of Sport Fisheries and Wildlife-----	2, 705, 000	2, 405, 000
RELATED AGENCIES			
NATIONAL COUNCIL ON INDIAN OPPORTUNITY			
91-199	Salaries and expenses-----	286, 000	286, 000
SMITHSONIAN INSTITUTION			
91-199	The John F. Kennedy Center for the Performing Arts-----	7, 500, 000	7, 500, 000
	Total, chapter III-----	27, 071, 000	25, 391, 000
			-- 1, 680, 000

CHAPTER IV

SUBCOMMITTEE ON DEPARTMENTS OF LABOR, AND HEALTH,
EDUCATION, AND WELFARE AND RELATED AGENCIESDANIEL J. FLOOD, Pennsylvania, *Chairman*WILLIAM H. NATCHER, KENTUCKY
NEAL SMITH, IOWA
W. R. HULL, JR., MISSOURI
BOB CASEY, TEXASROBERT H. MICHEL, ILLINOIS
GARNER E. SHRIVER, KANSAS
CHARLOTTE T. REID, ILLINOIS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

GALLAUDET COLLEGE

The Committee has included funds in the bill to strengthen the protection of students at Gallaudet College for the Deaf, which is located in the District of Columbia.

In the past year there have been a number of incidents involving theft or destruction of property and personal attacks on students on or near the campus. The College officials, in cooperation with the Metropolitan Police, have already taken a number of steps to deal with the situation. However, additional funds are needed immediately for an expansion of the guard force, for fencing, and for lighting the campus at night.

The bill includes \$75,000 for "Salaries and expenses", to expand the present security guard force from six to 22, and \$239,000 for "Construction", to install a new lighting system, and to provide more adequate fencing along the perimeter of the College's 93-acre campus.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL

H. Doc. No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
	CHAPTER IV			
	DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE			
	GALLAUDET COLLEGE			
-----	Salaries and expenses-----	-----	\$75, 000	+ \$75, 000
-----	Construction-----	-----	239, 000	+ 239, 000
	Total, chapter IV-----	-----	314, 000	+ 314, 000

CHAPTER V

SUBCOMMITTEE ON LEGISLATIVE BRANCH

GEORGE W. ANDREWS, Alabama, *Chairman*

TOM STEED, OKLAHOMA
 MICHAEL J. KIRWAN, OHIO
 SIDNEY R. YATES, ILLINOIS
 BOB CASEY, TEXAS

MARK ANDREWS, NORTH DAKOTA
 ODIN LANGEN, MINNESOTA
 BEN REIFEL, SOUTH DAKOTA
 LOUIS C. WYMAN, NEW HAMPSHIRE

LEGISLATIVE BRANCH

HOUSE OF REPRESENTATIVES

\$42,500 is proposed in this chapter of the bill for the customary gratuity provision upon the death of a Member.

CONGRESSIONAL SUMMER INTERN PROGRAM

The committee is proposing a new arrangement with respect to financing the cost of congressional summer interns. It would increase—by one—the maximum allowable number of employees in a Member's office (during 2½ months of the 3-month period June 1–August 31 each year) so as to fully accommodate the personnel provisions of House Resolution 416 of the 89th Congress, but without adding to the maximum basic clerk-hire monetary allowance now authorized for the offices.

Under the provision, the many Members who have been employing one or more congressional summer interns on their regular office clerk-hire roll could continue to do so next summer within the limits permitted by H. Res. 416, but without impinging upon the limit now imposed by law on the number of clerks otherwise authorized to them. The cost, however—which is limited by H. Res. 416 to not over \$750 *gross* per Member each summer—would be chargeable against the aggregate *basic* allowance of \$34,500 now authorized for congressional districts of less than 500 thousand constituents and \$37,000 for districts above that. This absorption should not be a strain on office budgets in view of the additional allowance of \$2,500 *basic* voted last June in H. Res. 357.

The restriction in the regular annual appropriation bill against use of the contingent fund would continue.

**COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL**

II. Doc. No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
	CHAPTER V LEGISLATIVE BRANCH HOUSE OF REPRESENTATIVES			
-----	Gratuity to heirs of deceased Member.....	-----	\$42, 500	+ \$42, 500
-----	Members' clerk hire.....	-----	(1)	-----
	Total, chapter V.....	-----	42, 500	+ 42, 500

¹ Language provision (congressional summer intern program).

CHAPTER VI

SUBCOMMITTEE ON DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE,
THE JUDICIARY, AND RELATED AGENCIESJOHN J. ROONEY, New York, *Chairman*ROBERT L. F. SIKES, FLORIDA
JOHN M. SLACK, WEST VIRGINIA
NEAL SMITH, IOWA
JOHN J. FLYNT, JR., GEORGIAFRANK T. BOW, OHIO
GLENARD P. LIPSCOMB, CALIFORNIA
ELFORD A. CEDERBERG, MICHIGAN
MARK ANDREWS, NORTH DAKOTA

DEPARTMENT OF STATE

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

INTERNATIONAL CONFERENCES AND CONTINGENCIES

Language recommended in the accompanying bill provides for an additional amount of \$350,000 for "International conferences and contingencies" to be derived by transfer from the appropriation for "Contributions to International Organizations."

The additional funds are to provide for the United States hostship of (1) the Third Preparatory Committee meeting and the resumed Plenipotentiary Conference on Definitive Arrangements for the International Telecommunications Satellite Consortium (a simple title) and (2) the Diplomatic Conference to Negotiate a Patent Cooperation Treaty.

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

SALARIES AND EXPENSES

The Committee recommends the full amount of the budget estimate, \$869,000, to reimburse the Immigration and Naturalization Service for its intensified efforts against smuggling of people and materials (particularly narcotics, marihuana, and other dangerous drugs) across the southern border.

BUREAU OF NARCOTICS AND DANGEROUS DRUGS

SALARIES AND EXPENSES

Likewise, the full amount of the budget estimate, \$700,000, is provided for larger purchases of evidence and payments to informants in furtherance of this Bureau's efforts to identify and bring to prosecution or otherwise attempt to immobilize the major drug conspiracies in the United States.

DEPARTMENT OF COMMERCE

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

The sum of \$858,000 is recommended to restore facilities and equipment destroyed by Hurricane Camille and to revise navigation charts to show changes caused by the hurricane. Of the amount allowed,

\$418,000 is for "Salaries and expenses" and \$440,000 is for "Facilities, equipment, and construction".

The funds requested for general improvement of services and facilities have not been allowed. Such requests should be a part of the regular annual appropriation presentation rather than supplemental requests.

Insofar as the \$210,000 request for 7 trailer type housing units, including land and improvements, is concerned, the Committee suggests that the responsible individuals get together some sensible plan providing ample decent housing at a reasonable cost and resubmit such plan with the 1971 fiscal year request.

OFFICE OF STATE TECHNICAL SERVICES

The request of \$5,000,000 for grants and expenses of the Office of State Technical Services has not been approved.

RELATED AGENCY

SMALL BUSINESS ADMINISTRATION

DISASTER LOAN FUND

Included in the bill is the amount of \$175,000,000 for additional capital for the "Disaster loan fund". This is to provide financial assistance on favorable terms to victims of recent natural disasters, primarily Hurricane Camille.

**COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL**

H. Doc. No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
	CHAPTER VI			
	DEPARTMENT OF STATE			
	INTERNATIONAL ORGANIZATIONS AND CONFERENCES			
91-199	International conferences and contingencies (<i>by transfer</i>)-----	(\$400, 000)	(\$350, 000)	(-\$50, 000)
	DEPARTMENT OF JUSTICE			
	IMMIGRATION AND NATURALIZATION SERVICE			
91-199	Salaries and expenses-----	869, 000	869, 000	-----
	BUREAU OF NARCOTICS AND DANGEROUS DRUGS			
91-199	Salaries and expenses-----	700, 000	700, 000	-----
	Total, Department of Justice-----	1, 569, 000	1, 569, 000	-----

DEPARTMENT OF COMMERCE

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

91-199	Salaries and expenses.....	1, 492, 000	418, 000	-1, 074, 000
91-199	Research and development.....	330, 000	-----	-330, 000
91-199	Facilities, equipment, and construction.....	2, 982, 000	440, 000	-2, 542, 000
	Total, Environmental Science Services Administration.....	4, 804, 000	858, 000	-3, 946, 000

OFFICE OF STATE TECHNICAL SERVICES

91-199	Grants and expenses.....	5, 000, 000	-----	-5, 000, 000
	Total, Department of Commerce.....	9, 804, 000	858, 000	-8, 946, 000

RELATED AGENCY

SMALL BUSINESS ADMINISTRATION

91-199	Disaster loan fund.....	225, 000, 000	175, 000, 000	-50, 000, 000
	Total, chapter VI.....	236, 373, 000	177, 427, 000	-58, 946, 000

CHAPTER VII

SUBCOMMITTEE ON DEPARTMENT OF TRANSPORTATION
AND RELATED AGENCIESEDWARD P. BOLAND, Massachusetts, *Chairman*

JOHN J. McFALL, CALIFORNIA

WILLIAM E. MINSHALL, OHIO

SIDNEY R. YATES, ILLINOIS

SILVIO O. CONTE, MASSACHUSETTS

DEPARTMENT OF TRANSPORTATION

COAST GUARD

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

The Committee considered a request of \$1,500,000 to restore certain Coast Guard stations and aids to navigation which were damaged by Hurricane Camille. An appropriation of \$1,200,000 is recommended. The Committee feels that the estimates provided by the Coast Guard were somewhat excessive, particularly in view of the value of the facilities being replaced.

**COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL**

H. Doc. No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
	CHAPTER VII DEPARTMENT OF TRANSPORTATION			
	COAST GUARD			
91-199	Acquisition, construction, and improvements.....	\$1, 500, 000	\$1, 200, 000	--\$300, 000
	Total, chapter VII.....	1, 500, 000	1, 200, 000	--300, 000

CHAPTER VIII

SUBCOMMITTEE ON DEPARTMENTS OF TREASURY AND POST OFFICE
AND EXECUTIVE OFFICETOM STEED, Oklahoma, *Chairman*OTTO E. PASSMAN, LOUISIANA
JOSEPH P. ADDABBO, NEW YORK
JEFFERY COHELAN, CALIFORNIASILVIO O. CONTE, MASSACHUSETTS
HOWARD W. ROBISON, NEW YORK
JACK EDWARDS, ALABAMA

TREASURY DEPARTMENT

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

The Committee recommends an appropriation of \$600,000, a reduction of \$20,000 below the budget estimate of \$620,000.

These funds are required in connection with an increased effort to be made by the Bureau of Customs against smuggling of marihuana and narcotics. The Office of the Secretary operates the Treasury Law Enforcement School which provides basic and specialized training for law enforcement agents of Customs, Internal Revenue Service, the Secret Service, and other Federal government and certain state agencies.

It will be necessary to provide training, equipment, space, and additional instructors in the School for the additional Customs agents recommended for the Bureau of Customs in this supplemental appropriation bill.

The Committee has allowed the 25 positions requested for the Office of the Secretary to provide for instructors and related personnel but has reduced the funds slightly because of the lapse of time since the estimates were developed.

BUREAU OF CUSTOMS

SALARIES AND EXPENSES

The Committee recommends an appropriation of \$8,750,000, a reduction of \$750,000 below the budget estimate of \$9,500,000.

The purpose of these funds is to permit the Treasury Department to mount a major effort against smuggling of marihuana and narcotics into the United States. The reduction of \$750,000 below the estimate is due to the lapse of time since these estimates were developed as well as the proposed recruiting plan, which are discussed in more detail below.

The Department testified that every available index indicates that problems associated with the use of marihuana and narcotics in the United States have reached major proportions. Drug usage is now widespread both geographically and among strata of society in which previously such usage was rare. Usage among college and even high school students is reported as commonplace.

In order to deal with this problem, the Department proposes to substantially increase the law enforcement effort against smuggling. The whole problem is put into sharp focus by the following testimony from the Treasury Department:

“Almost all of the marihuana, all of the heroin, all of the hashish, all of the cocaine, and all of the smoking opium used in the United States is smuggled into this country.”

“Operation Intercept”, a recent blitz law enforcement effort along the Mexican border, demonstrated rather conclusively that smuggling activities can be substantially reduced by increased enforcement efforts.

The Committee strongly supports the Department’s objective of reducing to a minimum the smuggling of this contraband into the United States. The Committee specifically allows the 915 additional positions requested and urges the Department to move ahead on this project as rapidly as practicable.

In connection with funding this effort, however, the Committee notes that the estimates are based on realizing 415 average positions. In view of the lapse of time since these estimates were developed, some slippage has already occurred. Furthermore, in order to achieve that number of average positions, it would be necessary for the service to bring on the rolls almost the entire allowance of 915 personnel by early January, 1970. That, of course, is highly impractical, if not almost impossible of accomplishment at this late date. Even the recruiting plan presented by the Department, if achieved, would not yield that number of average positions. The Committee, therefore, has reduced the funds by \$750,000, but has allowed the full number of positions requested together with the automobiles, aircraft, boats and related equipment contained in the request.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

The Committee recommends the full amount of the budget estimate of \$120,000.

This is a new office established by the President on February 14, 1969, by Executive Order No. 11455. The purpose of the office is to assist the Vice President with respect to his intergovernmental relations responsibilities as the President’s liaison with state, city and county governments.

The funds would be available only upon enactment of appropriate authorizing legislation.

PRESIDENT’S ADVISORY COUNCIL ON EXECUTIVE ORGANIZATION

SALARIES AND EXPENSES

The full amount of the budget request of \$1,000,000 is recommended.

This is a new council established by the President on April 5, 1969. It has been operating with funds advanced from the President's Emergency Fund. An advance of \$500,000 was made to the Council from the FY 1970 appropriation to the Emergency Fund, which is proposed to be reimbursed from the funds recommended herein.

The purpose of the Council is to undertake a thorough review of the organization of the Executive Branch in light of today's changing requirements; seek solutions to organizational problems arising from the many departments, agencies, offices, and other separate units of government; and evaluate the effectiveness of organizational relationships between the Federal Government and state and local governments.

The Council testified that it hoped to conclude its major work by June 30, 1970, but that some additional months beyond that date would be required for completing reports and recommendations.

INDEPENDENT AGENCY

TAX COURT OF THE UNITED STATES

SALARIES AND EXPENSES

The full amount of the budget estimate of \$65,000 is recommended by the Committee.

These funds are required for the salaries and expenses of an additional judge of the Tax Court and his staff for the remainder of this fiscal year. The new judge entered on duty October 1, 1969, thus providing the Court with its full complement of 16 judges.

COMPARATIVE STATEMENT OF LAW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL

29

H. Doc. No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
	CHAPTER VIII			
	TREASURY DEPARTMENT			
	OFFICE OF THE SECRETARY			
91-199	Salaries and expenses-----	\$620, 000	\$600, 000	—\$20, 000
	BUREAU OF CUSTOMS			
91-199	Salaries and expenses-----	9, 500, 000	8, 750, 000	—750, 000
	Total, Treasury Department-----	10, 120, 000	9, 350, 000	—770, 000
	EXECUTIVE OFFICE OF THE PRESIDENT			
	OFFICE OF INTERGOVERNMENTAL RELATIONS			
91-199	Salaries and expenses-----	120, 000	120, 000	-----
	PRESIDENT'S ADVISORY COUNCIL ON EXECUTIVE ORGANIZATION			
91-199	Salaries and expenses-----	1, 000, 000	1, 000, 000	-----
	Total, Executive Office of the President-----	1, 120, 000	1, 120, 000	-----
	INDEPENDENT AGENCY			
	TAX COURT OF THE UNITED STATES			
91-199	Salaries and expenses-----	65, 000	65, 000	-----
	Total, chapter VIII-----	11, 305, 000	10, 535, 000	—770, 000

CHAPTER IX

CLAIMS AND JUDGMENTS

The Committee recommends the appropriation of \$15,323,261, the amount of the estimate, for claims and judgments rendered against the United States. Of this amount, \$11,039,605 represents damage and other type claims, the payments of which are due under various laws, and \$4,283,656 represents judgments rendered by the U.S. Court of Claims and U.S. District Courts. Details concerning these claims and judgments are contained in House Document No. 91-199, 91st Congress.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS
RECOMMENDED IN THE BILL

H. Doc. No.	Department or activity	Budget estimates	Recommended in the bill	Bill compared with estimates
91-199	<div>CHAPTER IX</div> <div>Claims and judgments-----</div>	\$15, 323, 261	\$15, 323, 261	-----

CHAPTER X

GENERAL PROVISIONS

Section 1001 of the General Provisions in the bill is designed to lift restrictions contained in various appropriation bills on travel and related costs to the extent necessary to comport with provisions of Public Law 91-114. This Act, signed into law November 10, 1969, increased the maximum travel allowance of government employees travelling on official business within the continental United States from \$16 to \$25 per day and from \$30 to \$40 per day when travel is performed under certain unusual circumstances. This Act also provided for increased allowances for certain official travel outside the United States.

The restrictions carried in the appropriation bills were formulated generally without taking into account the provisions of Public Law 91-114.

Section 1002 is the standard language restricting obligation of funds appropriated in this bill to fiscal year 1970 unless expressly so provided otherwise in the bill.

LIMITATIONS AND LEGISLATIVE PROVISIONS

The following limitations and legislative provisions not heretofore carried in connection with any appropriation bill are recommended:

One page 6, in connection with Members' clerk hire:

After June 1, 1970, but without increasing the aggregate basic clerk hire monetary allowance to which each Member and the Resident Commissioner from Puerto Rico is otherwise entitled by law, the appropriation for "Members' clerk hire" may be used for employment of a "student congressional intern" in accord with the provisions of House Resolution 416, Eighty-ninth Congress.

On page 7, in connection with International Conferences and Contingencies:

: Provided, That \$150,000 of the foregoing amount shall be transferred and available only on enactment into law of S.J. Res. 90, 91st Congress, or similar legislation.

On page 9, in connection with the Office of Intergovernmental Relations:

: Provided, That this appropriation shall be available only upon enactment into law of S.J. Res. 117, 91st Congress, or similar legislation.

On page 9, in connection with the President's Advisory Council on Executive Organization:

** * * * * and employment and compensation of necessary personnel without regard to the civil service and classification laws and the provisions of 5 U.S.C. 5363-5364, * * * **

On page 11, in connection with General Provisions:

Sec. 1001. During the current fiscal year, restrictions contained within appropriations, or provisions affecting appropriations or other funds, limiting the amounts which may be expended for expenses of travel, or for purposes involving expenses of travel, or amounts which may be transferred between appropriations or authorizations available for or involving expenses of travel, are hereby increased to the extent necessary to meet increased per diem costs authorized by Public Law 91-114, approved November 10, 1969.







91ST CONGRESS
1ST SESSION

H. R. 15209

[Report No. 91-747]

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 1969

Mr. MAHON, from the Committee on Appropriations, reported the following bill; which was committed to the Committee of the Whole House on the State of the Union and ordered to be printed

DECEMBER 11, 1969

Considered, amended, and passed

A BILL

Making supplemental appropriations for the fiscal year ending
June 30, 1970, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the following sums are appropriated out of any money
4 in the Treasury not otherwise appropriated, to supply supple-
5 mental appropriations (this Act may be cited as the "Supple-
6 mental Appropriation Act, 1970") for the fiscal year end-
7 ing June 30, 1970, and for other purposes, namely:

CHAPTER I

DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

FLOOD PREVENTION

For an additional amount for "Flood prevention", for emergency measures for runoff retardation and soil erosion prevention, as provided by section 216 of the Flood Control Act of 1950 (33 U.S.C. 701 b-1), \$3,700,000, to remain available until expended.

RELATED AGENCY

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

In addition to the amount made available under this heading for administrative expenses during the current fiscal year, \$211,000 shall be available from assessments for such expenses, including the hire of one passenger motor vehicle.

CHAPTER II

INDEPENDENT OFFICES

CIVIL SERVICE COMMISSION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$430,000, for necessary expenses of the retirement and insurance programs, to be transferred from the trust funds "Civil Service retirement and disability fund", "Employees

1 life insurance fund", "Employees health benefits fund", and
2 "Retired employees health benefits fund", in such amounts
3 as may be determined by the Civil Service Commission.

4 FEDERAL LABOR RELATIONS COUNCIL

5 SALARIES AND EXPENSES

6 For expenses necessary to carry out functions of the Civil
7 Service Commission under Executive Order No. 11491 of
8 October 29, 1969, \$250,000: *Provided*, That public mem-
9 bers of the Federal Service Impasses Panel may be paid
10 travel expenses, including per diem in lieu of subsistence, as
11 authorized by law (5 U.S.C. 5703) for persons employed
12 intermittently in the Government service, and compensation
13 at the rate of not to exceed \$100 per day when engaged in
14 the performance of the Panel's duties.

15 COMMISSION ON GOVERNMENT PROCUREMENT

16 SALARIES AND EXPENSES

17 For necessary expenses of the Commission on Govern-
18 ment Procurement, \$500,000.

19 NATIONAL COMMISSION ON CONSUMER FINANCE

20 SALARIES AND EXPENSES

21 For expenses necessary to carry out the provisions of
22 Title IV of the Act of May 29, 1968 (Public Law 90-321),
23 \$375,000.

1 CHAPTER III
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF LAND MANAGEMENT
4 MANAGEMENT OF LANDS AND RESOURCES

5 For an additional amount for "Management of lands and
6 resources", \$1,000,000.

7 BUREAU OF INDIAN AFFAIRS
8 EDUCATION AND WELFARE SERVICES

9 For an additional amount for "Education and welfare
10 services", \$6,000,000.

11 OFFICE OF TERRITORIES
12 TRUST TERRITORY OF THE PACIFIC ISLANDS

13 For an additional amount for "Trust Territory of the
14 Pacific Islands", \$7,500,000, to remain available until ex-
15 pended.

16 GEOLOGICAL SURVEY
17 SURVEYS, INVESTIGATIONS, AND RESEARCH

18 For an additional amount for "Surveys, investigations,
19 and research", \$700,000.

20 BUREAU OF SPORT FISHERIES AND WILDLIFE
21 MANAGEMENT AND INVESTIGATIONS OF RESOURCES

22 For an additional amount for "Management and investi-
23 gations of resources", \$205,000.

24 CONSTRUCTION

25 For an additional amount for "Construction", \$2,200,-
26 000, to remain available until expended.

RELATED AGENCIES

NATIONAL COUNCIL ON INDIAN OPPORTUNITY

SALARIES AND EXPENSES

For expenses necessary for the National Council on Indian Opportunity, including services as authorized by U.S.C. 3109, \$286,000.

SMITHSONIAN INSTITUTION

THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

For additional expenses, not otherwise provided, necessary to enable the Board of Trustees of the John F. Kennedy Center for the Performing Arts to carry out the purposes of the Act of September 2, 1958 (72 Stat. 1698), as amended, including construction, to remain available until expended, such amounts which in the aggregate will equal gifts, bequests, and devises of money, securities and other property received by the Board for the benefit of the John F. Kennedy Center for the Performing Arts under such Act, not to exceed \$7,500,000.

CHAPTER IV

DEPARTMENT OF HEALTH, EDUCATION, AND

WELFARE

GALLAUDET COLLEGE

SALARIES AND EXPENSES

For an additional amount for "Gallaudet College, Salaries and expenses", \$75,000.

1 CONSTRUCTION

2 For an additional amount for "Gallaudet College, Con-
3 struction", \$239,000.

4 CHAPTER V

5 LEGISLATIVE BRANCH

6 HOUSE OF REPRESENTATIVES

7 For payment to Justina Ronan, mother, and to Eileen
8 Burke and Betty Dlouhy, sisters, of Daniel J. Ronan, late a
9 Representative from the State of Illinois, \$42,500, one-half
10 to the mother and one-quarter each to the sisters.

11 CHAPTER VI

12 DEPARTMENT OF STATE

13 INTERNATIONAL ORGANIZATIONS AND CONFERENCES

14 INTERNATIONAL CONFERENCES AND CONTINGENCIES

15 For an additional amount for "International conferences
16 and contingencies", \$350,000, to be derived by transfer from
17 the appropriation for "Contributions to International Orga-
18 nizations", fiscal year 1970: *Provided*, That \$150,000 of the
19 foregoing amount shall be transferred and available only on
20 enactment into law of S.J. Res. 90, 91st Congress, or
21 similar legislation.

22 DEPARTMENT OF JUSTICE

23 IMMIGRATION AND NATURALIZATION SERVICE

24 SALARIES AND EXPENSES

25 For an additional amount for "Salaries and expenses,
26 Immigration and Naturalization Service", \$869,000.

BUREAU OF NARCOTICS AND DANGEROUS DRUGS

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses,
Bureau of Narcotics and Dangerous Drugs", \$700,000.

DEPARTMENT OF COMMERCE

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses",
\$418,000.

FACILITIES, EQUIPMENT, AND CONSTRUCTION

For an additional amount for "Facilities, equipment,
and construction", \$440,000, to remain available until
expended.

RELATED AGENCY

SMALL BUSINESS ADMINISTRATION

DISASTER LOAN FUND

For additional capital for the "Disaster loan fund", au-
thorized by the Small Business Act, as amended, \$175,000,-
000, to remain available without fiscal year limitation.

CHAPTER VII

DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, construction,
and improvements", \$1,200,000, to remain available until
expended.

1 CHAPTER VIII

2 TREASURY DEPARTMENT

3 OFFICE OF THE SECRETARY

4 SALARIES AND EXPENSES

5 For an additional amount for "Salaries and expenses",
6 \$600,000.

7 BUREAU OF CUSTOMS

8 SALARIES AND EXPENSES

9 For an additional amount for "Salaries and expenses",
10 including hire of passenger motor vehicles and aircraft; pur-
11 chase of an additional one hundred and forty-eight passenger
12 motor vehicles for police-type use without regard to the gen-
13 eral purchase price limitation for the current fiscal year; and
14 purchase of an additional seven aircraft, \$8,750,000.

15 EXECUTIVE OFFICE OF THE PRESIDENT

16 OFFICE OF INTERGOVERNMENTAL RELATIONS

17 SALARIES AND EXPENSES

18 For expenses necessary for the Office of Intergovern-
19 mental Relations, \$120,000: *Provided*, That this appro-
20 priation shall be available only upon enactment into law
21 of S.J. Res. 117, 91st Congress, or similar legislation.

22 PRESIDENT'S ADVISORY COUNCIL ON EXECUTIVE

23 ORGANIZATION

24 SALARIES AND EXPENSES

25 For necessary expenses of the President's Advisory
26 Council on Executive Organization, including compensation

1 of members of the Council at the rate of \$100 per day
2 when engaged in the performance of the Council's duties,
3 services as authorized by 5 U.S.C. 3109, but at rates for
4 individuals not to exceed \$100 per diem, and employment
5 and compensation of necessary personnel without regard to
6 the civil service and classification laws and the provisions
7 of 5 U.S.C. 5363-5364, \$1,000,000, of which \$500,000
8 shall be for repayment to the appropriation for "Emergency
9 fund for the President", fiscal year 1970.

10 INDEPENDENT AGENCY

11 TAX COURT OF THE UNITED STATES

12 SALARIES AND EXPENSES

13 For an additional amount for "Salaries and expenses",
14 \$65,000.

15 CHAPTER IX

16 CLAIMS AND JUDGMENTS

17 For payment of claims settled and determined by de-
18 partments and agencies in accord with law and judgments
19 rendered against the United States by the United States
20 Court of Claims and United States district courts, as set forth
21 in House Document Numbered 91-199, Ninety-first Congress,
22 \$24,491,433, together with such amounts as may be neces-
23 sary to pay interest (as and when specified in such judg-
24 ments or provided by law) and such additional sums due to
25 increases in rates of exchange as may be necessary to pay

1 claims in foreign currency: *Provided*, That no judgment
2 herein appropriated for shall be paid until it shall become
3 final and conclusive against the United States by failure of the
4 parties to appeal or otherwise: *Provided further*, That unless
5 otherwise specifically required by law or by the judgment,
6 payment of interest wherever appropriated for herein shall
7 not continue for more than thirty days after the date of ap-
8 proval of the Act.

9 CHAPTER X

10 GENERAL PROVISIONS

11 SEC. 1001. During the current fiscal year, restrictions
12 contained within appropriations, or provisions affecting ap-
13 propriations or other funds, limiting the amounts which may be
14 expended for expenses of travel, or for purposes involving
15 expenses of travel, or amounts which may be transferred be-
16 tween appropriations or authorizations available for or in-
17 volving expenses of travel, are hereby increased to the ex-
18 tent necessary to meet increased per diem costs authorized
19 by Public Law 91-114, approved November 10, 1969.

1 SEC. 1002. No part of any appropriation contained in
2 this Act shall remain available for obligation beyond the
3 current fiscal year unless expressly so provided herein.

91ST CONGRESS
1ST Session

H. R. 15209

[Report No. 91-747]

A BILL

Making supplemental appropriations for the
fiscal year ending June 30, 1970, and for
other purposes.

By Mr. MAHON

DECEMBER 11, 1969

Committed to the Committee of the Whole House on
the State of the Union and ordered to be printed

DECEMBER 11, 1969

Considered, amended, and passed

Watkins	Widnall	Wydler
Watson	Wiggins	Wyllie
Watts	Williams	Wyman
Welcker	Wilson, Bob	Young
Whalley	Winn	Zion
White	Wold	Zwach
Whitehurst	Wright	
Whitten	Wyatt	

NAYS—179

Abbott	Gaydos	O'Hara
Adams	Glaimo	Olsen
Albert	Gilbert	O'Neill, Mass.
Anderson, Calif.	Gonzalez	Ottinger
Anderson, Ill.	Green, Pa.	Passman
Annunzio	Griffiths	Patman
Ashley	Gude	Patten
Barrett	Hagan	Pelly
Biaggi	Halpern	Perkins
Bieber	Hanley	Philbin
Bingham	Hanna	Pike
Blatnik	Hansen, Wash.	Poage
Boland	Harrington	Podell
Bolling	Harvey	Price, Ill.
Brademas	Hathaway	Rucinski
Brasco	Hawkins	Randall
Brooks	Hébert	Rarick
Brown, Calif.	Hechler, W. Va.	Rees
Burke, Mass.	Heckler, Mass.	Reid, N.Y.
Burleson, Tex.	Helstoski	Reuss
Burton, Calif.	Hicks	Riegle
Button	Hollifield	Robison
Byrne, Pa.	Horton	Rodino
Caffery	Howard	Roe
Carey	Hungate	Rogers, Colo.
Celler	Johnson, Calif.	Rooney, N.Y.
Chisholm	Karh	Rooney, Pa.
Clay	Kastenmeier	Rosenthal
Cohelan	Kazen	Rostenkowski
Conte	Kluczynski	Roybal
Conyers	Koch	Ryan
Corman	Kyros	St. Germain
Coughlin	Leggett	St. Onge
Culver	Long, La.	Scheuer
Daddario	Long, Md.	Sisk
Daniels, N.J.	Lowenstein	Smith, N.Y.
Davis, Ga.	McCarthy	Staggers
Diggs	McClory	Stanton
Dingell	McCulloch	Steed
Donohue	McFall	Steiger, Ariz.
Dowdy	Macdonald, Mass.	Stokes
Dulski	Madden	Stratton
Eckhardt	Matsunaga	Sullivan
Edmondson	Meeds	Symington
Edwards, Calif.	Melcher	Taft
Esch	Mikva	Teague, Tex.
Evans, Colo.	Miller, Calif.	Thompson, N.J.
Fallon	Minish	Tierman
Farbstein	Mink	Tunney
Feighan	Monagan	Udall
Findley	Moorhead	Van Dierlin
Flsh	Morgan	Vanik
Fisher	Morse	Vigorito
Flood	Mosher	Waldle
Foley	Moss	Whalen
Ford	Murphy, Ill.	Wilson
Fraser	Murphy, N.Y.	Charles H.
Friedel	Nedzi	Wolff
Gallagher	Nix	Yates
	Obey	Yatron
		Zablocki

NOT VOTING—20

Andrews, N. Dak.	Hays	Powell
Cahill	Hosmer	Purcell
Dawson	Jones, Tenn.	Relfel
Eilberg	Kirwan	Ruppe
Fascell	Kyl	Schneebell
Fulton, Tenn.	Lipscomb	Utt
	Mailliard	Vander Jagt

So the bill was passed.

The clerk announced the following pairs:

On this vote:

Mr. Purcell with Mr. Anderson of North Dakota.
Mr. Utt with Mr. Eilberg.
Mr. Lipscomb with Mr. Dawson.
Mr. Hosmer with Mr. Kirwan.

Until further notice:

Mr. Kyl with Mr. Fascell.
Mr. Ruppe with Mr. Mailliard.
Mr. Hays with Mr. Schneebell.
Mr. Relfel with Mr. Vander Jagt.

Mr. HOLIFIELD changed his vote from "yea" to "nay."

Mr. HAMILTON changed his vote from "nay" to "yea."

Mr. HECHLER of West Virginia changed his vote from "yea" to "nay."

Mr. BROYHILL of Virginia changed his vote from "nay" to "yea."

Mr. COUGHLIN changed his vote from "yea" to "nay."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CELLER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to extend their remarks and include extraneous matter on the bill just passed.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 2208. An act for the relief of James Hidakl Buck;

H.R. 4560. An act for the relief of Sa Cha Bae;

H.R. 5133. An act for the relief of Pagona Anomeriakaki;

H.R. 6600. An act for the relief of Panagiotis, Georgia, and Constantina Malliaras;

H.R. 10156. An act for the relief of Lidia Mendola; and

H.R. 11503. An act for the relief of Wylo Pleasant, doing business as Pleasant Western Lumber Co. (now known as Pleasant's Logging and Milling, Inc.).

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 13270. An act to reform the income tax laws.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 13270) entitled "An act to reform the income tax laws, requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. LONG, Mr. ANDERSON, Mr. GORE, Mr. TALMADGE, Mr. BENNETT, Mr. CURTIS and Mr. MILLER to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13763) entitled "An act making appropriations for the legislative branch for the fiscal year ending June 30, 1970, and for other purposes."

The message also announced that the Senate agrees to the House amendment to the Senate amendment numbered 37.

SUPPLEMENTAL APPROPRIATIONS, 1970

Mr. MAHON, from the Committee on Appropriations, reported the bill (H.R. 15209) making supplemental appropria-

tions for the fiscal year ending June 30, 1970, and for other purposes (Rept. No. 91-747), which was read a first and second time, and referred to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. BOW reserved all points of order on the bill.

Mr. MAHON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate on this measure be limited to not to exceed 30 minutes, the time to be equally divided and controlled by the gentleman from Ohio (Mr. Eow) and myself.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. BOW. Mr. Speaker, reserving the right to object, I realize the hour is late, and that Members would like to leave, but it seems to me on a supplemental bill of this size that general debate of 30 minutes is quite short. I would ask my chairman if he would ask for an hour of debate, and if we do not take it, fine, but it seems to me some Members may want to be heard on it, and it seems to me we should have some time for Members to speak if they care to.

Mr. MAHON. Mr. Speaker, I modify my request to ask that the time for general debate be not to exceed 1 hour, the time to be equally divided and controlled by the gentleman from Ohio and myself.

Mr. BOW. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER. The question is on the motion offered by the gentleman from Texas.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 15209, with Mr. O'HARA in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the unanimous consent agreement, the gentleman from Texas (Mr. MAHON) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. Bow) will be recognized for 30 minutes.

The chair recognizes the gentleman from Texas.

Mr. MAHON. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. GUBSER).

(By unanimous consent, Mr. GUBSER was allowed to speak out of order.)

SUBCOMMITTEE INVESTIGATION OF MYLAI INCIDENT

Mr. GUBSER. Mr. Chairman, I am currently serving as a member of the Investigating Subcommittee of the Armed Services Committee, which is

looking into the Army's handling and reporting of events connected with the so-called Mylai incident. In order to be impeccably responsible and completely objective, we as members of the committee have made no statements to the press because we have not heard all the evidence.

Today, on the first page of the Evening Star, I read an article by James Doyle which reads as follows in part:

A helicopter pilot has told members of the House Armed Services Committee that he trained his guns on American soldiers.

Later in the article it says:

He told the congressmen that when he landed he got in an argument with the platoon leader on the scene.

Mr. Chairman, I have been present at every single meeting of these hearings, and I say to you on my honor as a member of the U.S. House of Representatives that these statements are not true.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. GUBSER. I yield to the gentleman from Missouri.

Mr. ICHORD. Mr. Chairman, as one who was also present, I concur with the distinguished gentleman from California. The statement in the article is false.

Mr. GUBSER. Mr. Chairman, I thank the gentleman from Missouri.

Mr. GROSS. Mr. Chairman, would the gentleman yield to clarify, before he starts consideration of the bill. We are dealing now with a committee print which carries no number, but the committee print of the report shows "No. 91-747." Is that correct? Is there a printed numbered bill?

Mr. MAHON. Mr. Chairman, the number of the bill is H.R. 15209, which has been reported and filed. The bill is available on this table and on the table on the other side of the aisle and in the regular places near the Speaker's table. And so is the report.

The gentleman has a copy. It was not parliamentarily possible for us to file it earlier today during consideration of the civil rights bill, so there was some delay in getting the number.

This is the final supplemental bill, and the copy the gentleman has is what is now before us.

Mr. GROSS. There is nothing else to supersede what we have here?

Mr. MAHON. The gentleman is entirely correct.

Mr. GROSS. I thank the gentleman.

SUMMARY OF THE BILL

Mr. MAHON. Mr. Chairman, this supplemental bill is the final appropriation bill of the year to be presented to the House. It concludes the appropriations business of the House except, of course, for the consideration and disposition of conference reports on several bills pending in conference or in the other body.

If Members will turn to page 2 of the committee report, they can see at a glance the major features of the pending bill. It is a relatively modest supplemental bill. Something between 75 and 80 percent of the total in the bill relates in one way or another to the effects of Hurricane Camille last August. Briefly:

The committee considered estimates for new budget—obligational—authority

aggregating \$298,547,261 as contained in House Document No. 91-199, of November 24, and Senate Document No. 91-33, of September 15, the latter containing an estimate of \$8,380,000 not previously acted upon.

The committee recommends a total of \$235,057,761 in the accompanying bill, a reduction of \$63,489,500, or about 21 percent.

The committee actions on the various budget requests are explained in the applicable chapters of the report. But in summary may I say that of the \$235,057,761 new budget authority in the bill, \$175,000,000, or about 75 percent of the total, is for disaster relief loans under the Small Business Administration to supply replacement of funds drawn down largely on account of the devastation caused by Hurricane Camille. There are, in other accounts in the bill, about \$7,958,000 also associated with Hurricane Camille damage in August, 1969.

About 6 percent of the total, or \$15,323,261 is in the bill for claims and judgments.

Another 4 percent—\$9,350,000—is in the bill for law enforcement in the Treasury Department, primarily in connection with control of smuggling of marijuana and narcotics.

About 3 percent of the total of the bill, \$7,500,000 is for additional construction of the John F. Kennedy Center for the Performing Arts.

Nearly 6 percent of the total, or \$13,500,000 is for accelerated development of the Trust Territory of the Pacific Islands and for Indian education and welfare services.

In respect to the item for claims and judgments, I anticipate that an amendment will be offered by the gentleman from Oklahoma (Mr. EDMONDSON), increasing the amount for judgments, relating to an Indian Claims Commission award. I am advised that a budget estimate for that is on its way to the Capitol.

This is a relatively small supplemental. It does have a number of items in it. The great bulk of the total recommended is for emergencies of one sort or another, including additional requirements brought about by Hurricane Camille of last August.

Mr. HALL. Mr. Chairman, will the gentleman yield?

KENNEDY CENTER FOR PERFORMING ARTS

Mr. MAHON. I yield to the gentleman from Missouri.

Mr. HALL. Mr. Chairman, I appreciate the gentleman's statement and I certainly appreciate his yielding to me. I appreciate his coming to me yesterday and providing me in advance with a copy of the committee print. I understand that this is what is under current consideration.

The last statement the gentleman made I can only paraphrase. After explaining the main items he said that there were only lesser amounts outside of the emergencies and outside of the budget and so forth, which bothers me a little bit based on what my study has revealed in the bill under chapter 3, Department of the Interior and Related Agencies, lines 7 through 18, for additional expenses to enable the Board of Trustees of the John F. Kennedy Center

for the Performing Arts to carry out the purposes of the act of September 2, 1958.

Does the gentleman consider this an emergency or a matter of deficiency or properly in a supplemental appropriation bill to be considered here at this time of night? Is it still presided over by the same gentlemen, "Mr. R. Stevens," "Mr. B. Keeney," or whatever the name is, the gentleman who put out all of the grants for the arts center for the mating dance of the butterfly on the Amazon, and the study of "architecture" by the gentleman from Santa Barbara, the University of California?

Is this what we are adding \$7.5 million on, and must these funds be matched?

Those are quite a number of questions, but I am amazed to find this in a supplemental or deficiency appropriation bill.

Mr. MAHON. In response to the gentleman, the Kennedy Center has sustained a cost overrun of considerable magnitude. The building has been under construction for some time. The Congress has just recently approved the authorization of these additional funds, which are supposed to finish the structure.

President Nixon has sent up a budget request for \$7,500,000, representing this to be an emergency, because if the funds are not made available to proceed there will be a slowdown in the work and an accumulation of additional costs.

While the committee realized this was a matter which would be somewhat controversial, we saw no other alternative under all the circumstances than to provide the funds which had been requested. This is to be the last installment.

Mr. HALL. Mr. Chairman, if the gentleman will yield further, I realize that over the vote of some of us it was authorized on September 2. In fact, I think there was a little more authorized than this. But the distinguished gentleman, the chairman of the Committee on Appropriations, is telling me that we have overruns in the arts and humanities and in the cultural area just as we have overruns in the military and industrial production? Is a fair figure of 43 percent to which the gentleman referred correct insofar as this matter is concerned?

Mr. MAHON. I referred to that overrun a few days ago. It is 43 percent. As you know, and as the committee report on page 13 states, these funds would be matched by private contributions.

Mr. HALL. Mr. Chairman, would the gentleman go a little further and advise us whether those same men that were in charge—that were put in charge originally—have been rather loose with the grants and loose with the overruns as well as loose with the construction? Referring the gentleman again to my first question, can the gentleman answer whether in his opinion this is a true emergency or not?

Mr. MAHON. Under the circumstances I think it could be called an actual emergency.

Mr. GRAY. Mr. Chairman, will the gentleman from Texas yield to me for the purpose of responding to the question which has been propounded by the gentleman from Missouri (Mr. HALL)?

Mr. MAHON. I yield to the gentleman.

Mr. GRAY. If I may have the attention of the gentleman from Missouri, I would like to state that the overrun at the John F. Kennedy Center is being investigated by the General Services Administration as well as the Department of Justice. The matter is being looked into at the request of our Committee on Public Works and the very distinguished minority leader, the gentleman from Michigan (Mr. Ford), who raised a question about this when the authorizing committee brought out the bill. If there is any wrongdoing in the overruns of cost, it certainly will be brought out. However, as the gentleman knows and has been pointed out, this money is needed because the building is 61 percent complete and it will cost another \$10 million if they stop construction at this point. So, we must go ahead and advance it although we may be able to recoup some of this overrun.

Mr. HALL. I note that the gentleman from Illinois is dressed in formal attire and, perhaps, he is planning to attend a function at the Center, and I appreciate this. I am glad though that we are looking into this overrun. I do not wish to be characterized as one being against culture, but the question is, why is it an emergency.

Second, why does the Federal taxpayer have to pick up the tab for a mistake made by someone else, first in the selection of the site and, second, dealing with the contracts during a period of time when labor costs are mounting and are spiraling, during an inflationary period?

It looks to me like there has been a serious question of judgment with reference to this matter.

Would not the gentleman agree with me that an amendment would be in order to take this out of the supplemental appropriation bill?

Mr. GRAY. Mr. Chairman, if the gentleman from Texas will yield further, the original authorizing legislation called for a 50-50 matching basis; that is, for every dollar of private contribution, we would put up 1 Federal dollar. This is a bargain. I wish all buildings were built this way for the Federal Government.

Mr. HALL. Mr. Chairman, if the gentleman will let me correct the record right there, the original legislation which we passed—and I was here—we were promised by many people that it would never cost the Federal taxpayer 1 cent because the funds would be donated and collected and raised in any manner that anyone else raises such private funds, but they came back the second time and secured additional funds over the vote of many Members of this body, especially in view of the matching fund question. Is that the history of the situation?

Mr. GRAY. I stand corrected. The 1958 act which was the original act was based upon private contributions alone. However, after President Kennedy was killed, in 1963, the Congress did set up a matching formula. This is the only national monument to President Kennedy. The overruns were \$15 million and all we did was to authorize \$7.5 million in order to keep our commitment.

Mr. MINSHALL. Mr. Chairman, will the gentleman yield?

Mr. MAHON. I yield to the gentleman from Ohio.

Mr. MINSHALL. The gentleman realizes as a helicopter pilot and one who can operate in all directions—up and down and back and forth—I would like to ask the gentleman: How does one recoup overruns? If you solve this, you have got it made.

Mr. GRAY. Mr. Chairman, if the gentleman will yield further, I do not want to take too much time but, actually, what happened was that the architects made an error in judgment in estimating the cost of the project. Second, after the site was selected we had the advent of the jet service at National Airport and they had to go in and restrengthen the steel supporting structure because it is in the flyway of National Airport; both for sound and strength.

Some have said that the architect made a mistake and, therefore, the Department of Justice is now investigating to see whether or not they did make a mistake, and if they did, some of this cost will be charged to them.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. MAHON. I yield to the gentleman from Florida.

ALASKAN PIPELINE

Mr. ROGERS of Florida. Mr. Chairman, I want to commend the committee and particularly the gentlewoman from Washington State for cooperating with the Committee on Merchant Marine and Fisheries and especially the Fish and Wildlife Subcommittee with reference to a question which has been raised in our hearings dealing with the problem that a pipeline would be built by the oil companies across Alaska and the territory of the United States.

And all of the expense attendant upon that was going to have to be borne by the taxpayers to take care of those reports and those inspections, and investigations as to the effect on the wildlife, and we do not believe that ought to be done, it ought to be borne by the pipeline company. And we see that language is in the committee report which I know the gentlewoman from Washington (Mrs. HANSEN) has been most responsible for, and I want to commend the gentlewoman for that, and also the committee, and that they will continue to see that in these negotiations the proper fees for reimbursement purposes are made.

Again I commend the gentlewoman, and also the Committee on Appropriations, and I hope that they will follow it up, as I am sure that they will.

Mrs. HANSEN of Washington. Mr. Chairman, will the gentleman yield?

Mr. MAHON. I will yield to the gentlewoman from Washington, who chairs the subcommittee that heard this item.

Mrs. HANSEN of Washington. Mr. Chairman, may I say to the distinguished gentleman from Florida that we have followed upon the report and, as a result of our hearings, received a letter from Under Secretary Train, the essence of which says:

The Solicitor has advised me that, to the extent this Department reasonably incurs supervisory and other associated costs which are necessitated by the unique problems presented by the TAPS project and which are

not expenses which this Department otherwise would incur in the normal operations, there is adequate statutory authority for us to charge such reasonable costs to TAPS.

Then he goes on:

It is my opinion that you have the discretionary authority, under the appropriate circumstances, to impose on a pipeline right-of-way applicant reasonable charges to reimburse the Department for expenses necessarily incurred by it in connection with the application and the subject matter thereof.

Mr. ROGERS of Florida. Mr. Chairman, I thank the gentlewoman from Washington.

Mr. MAHON. Mr. Chairman, I yield to the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would like to commend the gentleman from Texas and the distinguished gentlewoman from Washington for the outstanding job they have done in assuring that the costs that have been mentioned insofar as protecting the ecology and environment in connection with the Trans-Alaska Pipeline project will be borne by the pipeline company itself rather than by the taxpayers.

As the gentleman from Florida indicated, this was a matter of grave concern in our Subcommittee on Fisheries and Wildlife of the Merchant Marine and Fisheries Committee, and we had Secretary Train and other Department of Interior representatives before us to brief us. Subsequently, a letter was sent, signed by a number of Members of the House, including the gentlewoman from Washington, to the Secretary of the Interior stressing our position that these matters should be borne by the pipeline company.

Again I wish to commend the gentlewoman from Washington, and it is also my hope that she and the distinguished Committee on Appropriations will be most vigorous in insuring that the Department of the Interior in its negotiations insist on these matters being carried out as suggested.

I do not know if the pipeline companies have signed the stipulations, but I would point out, and I would hope the gentlewoman will comment on this, that it is my impression that none of the conglomerate companies have signed the stipulations. I wonder if the gentlewoman from Washington has any comment on that?

Mrs. HANSEN of Washington. Mr. Chairman, will the gentleman yield?

Mr. MAHON. I yield to the gentlewoman from Washington.

Mrs. HANSEN of Washington. The record will show that there have been no stipulations actually agreed to in writing by any of the oil companies involved.

COMMISSION ON GOVERNMENT PROCUREMENT

Mr. MAHON. Mr. Chairman, I yield to the gentleman from California (Mr. HOLIFIELD).

Mr. HOLIFIELD. Mr. Chairman, on page 8 of the report the matter of the Government procurement appropriation is commented on. I want to thank the committee for making the initial appropriation, and to call to the attention of the Chairman that the committee has approved the purpose of this matter, but due to the lateness of the year they cut

the budget estimate by \$2 million, but that is in no way to be considered as being in opposition to the commission. As soon as the commission is appointed, and the plans properly presented, we will have the opportunity to come before the committee for an additional appropriation.

Mr. Chairman, I thank the gentleman for yielding.

Mr. MAHON. Mr. Chairman, I yield to the gentleman from Tennessee (Mr. EVINS).

Mr. EVINS of Tennessee. Mr. Chairman, I thank the gentleman for yielding. The purpose of the commission has been approved, but because of the lateness of the year we did not feel that full funding was necessary. We can take a look at it again next year.

We think there is a sufficient amount in the bill to get it organized and get the planning underway.

Mr. Chairman, I thank the gentleman for yielding.

CONGRESSIONAL SUMMER INTERNS

Mr. MAHON. Mr. Chairman, the gentleman from Alabama (Mr. ANDREWS) the chairman of the Legislative Subcommittee, would wish to point out what the committee has recommended in the bill in regard to the congressional summer intern program.

Mr. ANDREWS of Alabama. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I think we have made a satisfactory resolution of the question of allowances for summer interns. There is no added money in the bill for this purpose, but we are recommending an additional place in each Member's office. We have provided language which will permit Members to increase the number of employees during the summer months. Quoting from the committee report:

The committee is proposing a new arrangement with respect to financing the cost of congressional summer interns. It would increase—by one—the maximum allowable number of employees in a Member's office (during 2½ months of the 3-month period June 1–August 31 each year) so as to fully accommodate the personnel provisions of House Resolution 416 of the 89th Congress, but without adding to the maximum basic clerk-hire monetary allowance now authorized for the offices.

Under the provision, the many Members who have been employing one or more congressional summer interns on their regular office clerk-hire roll could continue to do so next summer within the limits permitted by H. Res. 416, but without impinging upon the limit now imposed by law on the number of clerks otherwise authorized to them. The cost, however—which is limited by H. Res. 416 to not over \$750 gross per Member each summer—would be chargeable against the aggregate basic allowance of \$34,500 now authorized for congressional districts of less than 500 thousand constituents and \$37,000 for districts above that. This absorption should not be a strain on office budgets in view of the additional allowance of \$2,500 basic voted last June in H. Res. 357.

The restriction in the regular annual appropriation bill against use of the contingent fund would continue.

Mr. MAHON. Mr. Chairman, I thank the gentleman for his statement.

Mr. Chairman, I do not have any requests for further time at the moment.

The CHAIRMAN. The gentleman from Texas has consumed 21 minutes.

Mr. BOW. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I may say that in most details we support this supplemental appropriation bill.

I was delighted that my good friend, the gentleman from Missouri, Dr. HALL, took care of the Kennedy Center. I tried to do it a few months ago in the authorization bill and ended up by his having to take care of me.

I should like to discuss it in much more detail, but fearful that I may have to call upon him again, I shall not do it.

I think this item certainly should be investigated. I am delighted that the gentleman from Illinois (Mr. GRAY) thinks he is going to recoup—but I do not think he is going to recoup.

My opinion, in spite of some of the testimony in the hearings, is that this is the end and there will not be any more.

They did make the statement in the hearings that there would be no more Federal funds for construction. I do not know what that means. But I would assume that this item is going to be with us for a long, long time.

I think a very careful study should be made of the entire situation down there. It should be investigated very carefully and I would support the good doctor's amendment, if he offers one.

Otherwise, I think this is a good bill. Mr. Chairman, most of the details are well explained in the report.

Mr. Chairman, I have no requests for time that I know of on this side.

The CHAIRMAN. The gentleman from Ohio has consumed 2 minutes.

Mr. MAHON. Mr. Chairman, I have no further requests for time and ask that the Clerk read.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

SMITHSONIAN INSTITUTION

THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

For additional expenses, not otherwise provided, necessary to enable the Board of Trustees of the John F. Kennedy Center for the Performing Arts to carry out the purposes of the Act of September 2, 1958 (72 Stat. 1698), as amended, including construction, to remain available until expended, such amounts which in the aggregate will equal gifts, bequests, and devises of money, securities and other property received by the Board for the benefit of the John F. Kennedy Center for the Performing Arts under such Act, not to exceed \$7,500,000.

AMENDMENT OFFERED BY MR. HALL

Mr. HALL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HALL: On page 5, strike out all of line 8 through 18.

Mr. HALL. Mr. Chairman, this amendment speaks for itself. It simply amputates line 7 through 18 until such time as we can have the necessary investigations that have been referred to by the distinguished gentleman from Illinois here, and know exactly how we are using, and whether or not we are prop-

erly using, the taxpayers' money—even in accordance with the authorization which was passed by the majority in good faith.

Mr. Chairman and Members of the Committee, this certainly is not an emergency. They are proceeding with the buildings. They can proceed with the donated funds, or those that are raised otherwise, with the construction, until the investigation of the Department of Justice and the investigation of the General Services Administration is completed.

This is a time of austerity, budget balancing, and emergency. Mr. Chairman, this is a time when we in Congress have placed a ceiling of expenditures on the Chief Executive of the United States. Certainly this is one area where we can defer and tighten our belts and withhold. If we, the Congress, are not going to establish the priorities by which the President shall reduce these expenditures in order to come within the amount within the appropriated funds.

Congress must not limit spending on the one hand and continue these niceties—no matter how nice they are—that are in excess of the budget. Therefore, I am in favor of removing this, without any prejudice, for the time being, as a means of saving.

I am glad to know it is under investigation. I am glad the committee has been informed that no stoppage of construction would be in order, but that there have been "overruns," and that they are being investigated. I personally hope construction will not be stalled on the basis of funds available from others, or on the contractor's responsibility. Be that as it may, our great responsibility is to the Treasury of the United States and to the taxpayers of America, and I hope this amendment does pass.

KENNEDY CENTER FOR THE PERFORMING ARTS

Mr. MAHON. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the bill provides "not to exceed \$7,500,000." That is for the completion of the John F. Kennedy Center. It says "not to exceed" because these funds have to be matched by private contributions before they become available. This project has been under construction for a long time. If we do not proceed now with the project, if construction is interrupted, it is estimated additional unnecessary costs will be incurred. That is the situation.

Mr. Chairman, I yield to the gentleman from Illinois (Mr. GRAY) to comment on the additional cost that may be incurred if the construction schedule is delayed.

Mr. GRAY. Mr. Chairman, I thank the gentleman from Texas for yielding.

Mr. Chairman, we went into this matter very carefully when the Subcommittee on Public Buildings and Grounds brought out the authorizing legislation. The General Services Administration testified that if we stop this project now, at 61 percent completion, and start it up again, even 1 year hence, it will cost about \$12 million more.

Mr. Chairman, these are all special craftsmen. For example, over a dozen countries are supplying various hard-

ware, including pieces of stone, various drapery materials, and chandeliers and things of this nature, and they have engaged the subcontractors to install this. If we stop now and disengage them and cancel the contracts, we will be having to start this up plus the \$7½ million in this bill. So anyone who votes against this is not voting for economy. They are voting for \$19.5 million instead of \$7.5 million, if we go over to next year or some future date.

Mr. MAHON. Mr. Chairman, I thank the gentleman from Illinois for his contribution. It seems to me that under all the circumstances we must go forward and complete this work. I trust the project will not be delayed.

Mr. Chairman, when President Nixon submitted this supplemental budget estimate he limited it more or less to urgent items. He did not wish to have a supplemental, but he found it impossible to avoid. This is a relatively small supplemental. The President would not have included this item unless he felt compelled to do so, because the President knows this project is not popular with all Members. It has encountered considerable difficulty, but it will be best to proceed with it.

Mr. Chairman, I yield now to the distinguished Speaker of the House.

Mr. McCORMACK. Mr. Chairman, in addition to the reasons advanced by the gentleman from Texas and the gentleman from Illinois, there is a sentimental side to this appropriation. The reasons advanced seemed to me to be convincing, but I think we are justified in not overlooking the sentimental side, that this memorial is named in honor of a man whose life was drastically taken away from us by an evil-minded assassin. It is named in honor of a man whose memory will always occupy the foremost pages in American history and occupy a foremost position in the minds of Americans of all generations.

Mr. MAHON. Mr. Chairman, I thank the Speaker.

Mrs. HANSEN of Washington. Mr. Chairman, I rise in opposition to the amendment. The authorization for this additional appropriation for the John F. Kennedy Center passed the House on July 8, 1969, by a record vote of 210 yeas to 162 nays. The appropriation of funds for the Center is the next logical step in our legislative process.

Certainly I am as disappointed as any one of the cost overrun experienced in connection with this project. We went into this very thoroughly in the hearings the subcommittee conducted on this budget request. While some portion of the cost overrun may be questionable, testimony developed during the hearing indicated that certainly some part of the cost overrun was beyond the reasonable control of anyone.

The history of this project has been somewhat stormy. There has been discussion as to where it should be built, how it should be built, when it should be built, and how it should be operated.

Be that as it may, we are now faced with a situation where we have half a building standing on the shore of the Potomac. I think it would make good

sense to complete it. To do otherwise, would be foolhardy.

The committee has been informed that the John F. Kennedy Center cannot be operated on a limited basis. That is to say, it is not feasible or practical to finish off the space now under construction. Witnesses further testified during the hearing that if the construction schedule is interrupted for 1 or 2 years, millions of dollars of additional costs will be incurred unnecessarily. Eliminating this item from the supplemental bill will result in no saving to the American taxpayer. Believe me, this structure is going to be completed sooner or later, and the later it is completed the more it will cost.

I make no apology whatsoever for my support of this appropriation item. This is the people's Capital. When they come here it is important that we present the best face of America, not only to natives of this land, but to visitors from all countries of the world. Certainly it will not hurt our image to be associated with "culture."

I earnestly refer all Members to the in-depth hearings we conducted on this request which begin on page 387 and run through page 422 of the printed hearings on this bill. In my opinion, the record established during that hearing warrants the support of this appropriation.

Mr. GROSS. Mr. Chairman, I move to strike the necessary number of words, and rise in support of the amendment of my good friend from Missouri.

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman, I, too, want to be sentimental. I want to be sentimental in behalf of the taxpayers of this country. I am not unaware and others ought not to be unaware, although they may seem to be, that we have about \$370 billion of Federal debt. We have a Bureau of the Public Debt and it will need next year between \$18 to \$19 billion, simply to pay the annual interest on that Federal debt.

Mr. Chairman, when will some of the sentimentalists in the House of Representatives say a few words in behalf of the taxpayers? When are they going to speak out and vote in behalf of balancing the budget and stopping inflation?

Only an actual balancing of the budget will stop interest charges and inflation from going right on up. It is time for some sentimentalism in behalf of those who pay the bills.

The gentleman from Illinois (Mr. GRAY) keeps repeating that failure to approve this \$7,500,000 will cost us so much more; that "we" have to do this, and "we" have to do that. Why do we have to do anything—we, the Members of Congress—by way of appropriating money for this project?

Mr. GRAY. Mr. Chairman, will the gentleman yield?

Mr. GROSS. The gentleman recently took the lead in establishing a so-called visitor's center in Washington, and already we are being told that multimillion-dollar boondoggle is in financial trouble and will have to come to Congress for more money.

Mr. GRAY. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I yield.

Mr. GRAY. I beg the gentleman's pardon, but that visitors' center is not costing the taxpayer one red cent.

Mr. GROSS. I suggest you wait until you get through with it.

Mr. GRAY. All right. Will the gentleman yield further?

Mr. GROSS. Do not stake your reputation on it here this evening, that it will not.

Mr. GRAY. Will the gentleman yield further?

Mr. GROSS. Briefly, because I have a few other things to say.

Mr. GRAY. Let me say to the gentleman, in the case of the John F. Kennedy Center, those taxpayers he is bleeding for, and for whom I bleed, have put in, as of today, \$9 million more than the Federal Government. The gentleman did not tell that.

Mr. GROSS. And the taxpayers of the Nation will have about \$40 million in this cultural castle if this \$7,500,000 is approved.

Mr. GRAY. Thirty-two millions dollars that the American taxpayers have donated for construction of the John F. Kennedy Center to date. That is \$9 million more than we have paid.

Mr. GROSS. With this money, the taxpayers of the country will have somewhere around \$35 million or \$40 million in it. In addition, they will be carrying the load for the tax-exempt foundation money that has gone into it.

Mr. GRAY. Twenty million dollars of which will be repaid from the bonds.

Mr. GROSS. You hope so. It will probably be just the way the bonds on the Washington stadium are being paid off. They are not. We are putting up at least 17 percent of the interest each year on the \$20,000,000 worth of stadium bonds and we were told that that white elephant would not cost us any money.

Members of Congress were told that this cultural center would cost the taxpayers of the country not one dime when it was started. The gentleman admitted it a moment ago. I guess I have lived too long; have been around too long, or have too long a memory. I can remember the start of both those deals. All of us were assured it was not going to cost the taxpayers a cockeyed dime for either the cultural center or the stadium.

Do not deceive us. I know the gentleman would not do that. Do not deceive us again on propositions of this kind.

Let me tell you where they can get the money to finish the Kennedy Center. They can go out and get it where they said they were going to obtain it in the first place—from the people who are interested in this sort of thing. That is the place to get the money; that is where you said you would get it, not from all the taxpayers.

Get your hands out of the pockets of the taxpayers of the Third Congressional District of Iowa, for cultural centers and stadiums in Washington, D.C. All I ask you to do: get off the backs of my taxpayers.

The gentleman from Missouri (Mr. HALL) is to be commended for offering

his amendment and attempting to save the taxpayers \$7,500,000; for trying to do what he can to save this Nation from a financial crisis. Unless this kind of non-essential spending is stopped and stopped now there is nothing to save this country from a confrontation with insolvency.

Mr. Chairman, I urge adoption of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. HALL).

The question was taken; and on a division (demanded by Mr. HALL) there were—ayes 22, noes 54.

So the amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

MEMBERS' CLERK HIRE

After June 1, 1970, but without increasing the aggregate basic clerk hire monetary allowance to which each Member and the Resident Commissioner from Puerto Rico is otherwise entitled by law, the appropriation for "Members' clerk hire" may be used for employment of a "student congressional intern" in accord with the provisions of House Resolution 416, Eighty-ninth Congress.

POINT OF ORDER

Mr. GROSS. Mr. Chairman, I make a point of order against the language on page 6, beginning with line 11 and through line 18, as being legislation on an appropriation bill.

The CHAIRMAN. Does the gentleman desire to be heard in support of the point of order?

Mr. GROSS. I thought I made the point of order, Mr. Chairman.

The CHAIRMAN. Does the gentleman from Texas desire to be heard on the point of order?

Mr. MAHON. Mr. Chairman, the Committee on Appropriations put this legislation in the bill for the purpose of accommodating Members. It is subject to a point of order, and the point of order is conceded.

The CHAIRMAN. The gentleman from Texas has conceded the point of order, and the Chair sustains the point of order.

The Clerk will read.

The Clerk read as follows:

CHAPTER IX

CLAIMS AND JUDGMENTS

For payment of claims settled and determined by departments and agencies in accord with law and judgments rendered against the United States by the United States Court of Claims and United States district courts, as set forth in House Document Numbered 91-199, Ninety-first Congress, \$15,323,261, together with such amounts as may be necessary to pay interest (as and when specified in such judgments or provided by law) and such additional sums due to increases in rates of exchange as may be necessary to pay claims in foreign currency: *Provided*, That no judgment herein appropriated for shall be paid until it shall become final and conclusive against the United States by failure of the parties to appear or otherwise: *Provided further*, That unless otherwise specifically required by law or by the judgment, payment of interest wherever appropriated for herein shall not continue for more than thirty days after the date of approval of the Act.

AMENDMENT OFFERED BY MR. EDMONDSON

Mr. EDMONDSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. EDMONDSON: On page 10, line 13, strike out "\$15,323,261" and insert "\$24,491,433".

Mr. EDMONDSON. Mr. Chairman, I shall not take the 5 minutes allocated to me to discuss this amendment.

The able and distinguished chairman of the Committee on Appropriations explained at the outset of this bill the matter which is covered by this amendment.

It represents the sum of a judgment which was awarded under docket No. 72 and docket No. 298, to the Delaware Tribe of Indians and the absentee Delaware Tribe of Oklahoma by the Indians Claims Commission. It is a final award. It has been submitted by the Treasury Department to the Bureau of the Budget on November 19 as a final award. It is my understanding that it is to be transmitted by the Bureau of the Budget either today or tomorrow. I believe that the custom is in these cases to have the House of Representatives originate appropriations items and I have offered the amendment for that purpose.

Mr. MAHON. Mr. Chairman, will the gentleman yield?

Mr. EDMONDSON. I am happy to yield to the distinguished gentleman from Texas.

Mr. MAHON. Mr. Chairman, the gentleman from Oklahoma is correct in his statement that this is a judgment, and a final judgment. The Treasury Department and the Bureau of the Budget have approved a request which is en route to Congress for the payment of this sum.

So I have no objection to the amendment.

Mr. BOW. Mr. Chairman, will the gentleman yield?

Mr. EDMONDSON. I am happy to yield to the gentleman from Ohio.

Mr. BOW. I have been advised by the White House that this request is on its way here. It represents a final judgment and must be paid. We on this side have no objection to acceptance of the amendment.

Mr. EDMONDSON. I thank the gentleman.

Mr. Chairman, I insert at this point in the RECORD the letter which I have received from the Treasury Department with reference to this matter.

The letter referred to follows:

THE DEPARTMENT OF THE TREASURY,
FISCAL SERVICE, BUREAU OF ACCOUNTS,
Washington, D.C., December 5, 1969.

HON. ED EDMONDSON,
House of Representatives,
Washington, D.C.

DEAR MR. EDMONDSON: This is in response to a telephone call received December 4, from Mr. Richard H. White of your staff requesting a status report concerning payment of the final award ordered by the Indian Claims Commission in favor of the Absentee Delaware Tribe of Oklahoma, et. al., (Docket No. 72) and the Delaware Tribe of Indians (Docket No. 298), in the principal amount of \$9,168,171.13. Our office received a certified copy of the award from the Indian Claims Commission on November 19.

We can pay such awards only from funds appropriated by the Congress specifically for this purpose. Our request for the funds needed to pay this award was sent to the Bureau of the Budget on December 4 for inclusion in the President's next request to

the Congress for a supplemental appropriation. The timing of the submission of these appropriation requests by the Treasury to the Bureau of the Budget is determined by the Bureau of the Budget. We have been advised by officials of that office that our request will be forwarded to the Congress in the very near future.

As soon as the necessary funds are appropriated by the Congress, we will take prompt action to pay this award.

Very truly yours,

S. L. COMINGS,
Comptroller.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oklahoma.

The amendment was agreed to.

Mr. CONTE. Mr. Chairman, I want to say a few words about the \$8.7 million the distinguished Subcommittee on the Treasury and Post Office, on which I am the ranking minority member, has recommended and the full committee has approved, for the Bureau of Customs.

The problem of drug abuse has reached critical proportions in this country. One of the best ways to put a stop to it is by halting the flow of drugs into the United States from abroad. This is precisely the very difficult job that the Bureau of Customs must carry out.

I commend them for the great efforts they are making, and for the even greater efforts they will be making in the future. The problem is perhaps not fully recognized by enough people. For example, almost all of the marihuana, all of the heroin, all of the hashish, all of the cocaine, and all of the smoking opium used in the United States is smuggled into this country. Stopping this flow, as you can imagine, is no easy job.

The profits are huge for the drug smuggler. An ounce of 50-percent-pure heroin worth \$350 when it crosses the border will be cut to 16 ounces of 3-percent-pure heroin for retail distribution.

This will provide approximately 1,800 doses which will be retailed at between \$5 and \$10 each—for a retail total of roughly \$13,500, or \$40 for each \$1 invested.

I know from first hand observations that the customs officials are working day in and day out, far from their families, to stop the flow across the Mexican border in Operation Intercept. Their dedication is remarkable and I commend them for it.

We have got to try to put a stop to the drug traffic crossing our borders. That is why I strongly support the committee's recommendations for enough men, money, cars, boats, planes, and all related equipment. It is one of the most worthwhile investments we can make.

The Clerk concluded the reading of the bill.

Mr. MAHON. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with an amendment, with the recommendation that the amendment be agreed to and that the bill as amended do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. ALBERT) having assumed the chair, Mr. O'HARA, Chairman of the Committee of the Whole House on the State of the Union,

reported that that Committee, having had under consideration the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes, had directed him to report the bill back to the House with an amendment, with the amendment, with the recommendation that the amendment be agreed to and that the bill as amended do pass.

Mr. MAHON. Mr. Speaker, I move the previous question on the bill and the amendment thereto to final passage.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Mr. GROSS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. GROSS. Unqualifiedly and unequivocally.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Gross moves to recommit the bill H.R. 15209, to the Committee on Appropriations with instructions to report the bill back forthwith with the following amendment: On page 5, strike out all of lines 7 through 18.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. GROSS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant-at-Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 142, nays 243, not voting 48, as follows:

[Roll No. 318]

YEAS—142

Abbitt	Camp	Edwards, Ala.
Abernethy	Carter	Erlenborn
Anderson, Ill.	Chappell	Eshleman
Andrews, Ala.	Clancy	Fish
Arends	Clawson, Del.	Fisher
Beall, Md.	Collier	Flowers
Belcher	Collins	Flynt
Bell, Calif.	Conable	Foreman
Berry	Corbett	Fountain
Betts	Coughlin	Frey
Bevill	Cowger	Goldwater
Blackburn	Crane	Gonzalez
Bow	Daniel, Va.	Goodling
Bray	Davis, Wis.	Griffin
Brinkley	de la Garza	Gross
Brock	Dellenback	Gubser
Brown, Mich.	Denney	Hagan
Broyhill, N.C.	Dennis	Haley
Buchanan	Derwinski	Hall
Burke, Fla.	Devine	Hammer-
Burlison, Mo.	Dickinson	schmidt
Burton, Utah	Dowdy	Hansen, Idaho
Bush	Downing	Harsha
Cabell	Duncan	Hastings

Henderson
Hogan
Hunt
Hutchinson
Johnson, Pa.
Jones, N.C.
Kleppe
Landgrebe
Landrum
Langen
Latta
Lennon
Lloyd
Long, La.
Lujan
Lukens
McClure
McCulloch
McEwen
Martin
Meskill
Michel
Miller, Ohio
Minshall

Mizell
Montgomery
Myers
Nichols
O'Konski
O'Neal, Ga.
Poage
Poff
Pollock
Price, Tex.
Quillen
Railsback
Rarick
Reid, Ill.
Roth
Roudebush
Ruth
Satterfield
Saylor
Schadeberg
Scherle
Scott
Sebelius
Skubitz

Smith, Calif.
Snyder
Steiger, Ariz.
Steiger, Wis.
Stubblefield
Stuckey
Talcott
Taylor
Thompson, Ga.
Waggonner
Wampler
Watkins
Watson
Weicker
Whalley
Whitehurst
Widnall
Wiggins
Winn
Wold
Wylie
Zion
Zwach

Williams
Wilson,
Charles H.
Wolff

Wright
Wyatt
Wydler
Wyman

Yates
Yatron
Young
Zablocki

NOT VOTING—48

Anderson, Tenn.	Edwards, Calif.	Lipscomb
Andrews, N. Dak.	Eilberg	McCarthy
Ashbrook	Fallon	McMillan
Ashley	Fascell	Mailliard
Baring	Ford, Gerald R.	Mize
Bingham	Fulton, Tenn.	Morton
Broomfield	Halpern	Patman
Cahill	Hawkins	Powell
Celler	Hébert	Purcell
Clay	Hosmer	Reifel
Colmer	Jones, Tenn.	Riegle
Davis, Ga.	King	Ruppe
Dawson	Kirwan	Schneebeli
Diggs	Kluczynski	Utt
Dwyer	Koch	Vander Jagt
	Kuykendall	Wilson, Bob
	Kyl	

So the motion to recommit was rejected.

The Clerk announced the following pairs:

On this vote:

Mr. Ashbrook for, with Mr. Celler against.
Mr. Colmer for, with Mr. Broomfield against.

Mr. Davis, of Georgia for, with Mr. Ashley against.

Mr. McMillan for, with Mr. Reifel against.

Mr. Utt for, with Mr. Mize against.

Mr. Bob Wilson for, with Mr. Kluczynski against.

Mr. Schneebeli for, with Mr. Ruppe against.

Mr. Hébert for, with Mr. Halpern against.

Mr. Kuykendall for, with Mr. Koch against.

Mr. King for, with Mr. Fallon against.

Mr. Hosmer for, with Mr. McCarthy against.

Until further notice:

Mr. Purcell with Mr. Andrews of North Dakota.

Gerald R. Ford with Mr. Kirwan.

Mr. Anderson of Tennessee with Mrs. Dwyer.

Mr. Bingham with Mr. Mailliard.

Mr. Fulton of Tennessee with Mr. Morton.

Mr. Baring with Mr. Lipscomb.

Mr. Patman with Mr. Kyl.

Mr. Edwards of California with Mr. Riegle.

Mr. Eilberg with Mr. Vander Jagt.

Mr. Fascell with Mr. Cahill.

Mr. Hawkins with Mr. Clay.

Mr. Diggs with Mr. Dawson.

Mr. MICHEL, Mr. RAILSBACK, Mr. COUGHLIN, and Mr. WIDNALL changed their votes from "nay" to "yea."

Mr. WYMAN, Mr. McDONALD of Michigan, Mr. AYRES, and Mr. ESCH changed their votes from "yea" to "nay."

The result of the vote was announced as above recorded.

The doors were opened.

The SPEAKER pro tempore. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. MAHON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the supplemental appropriation bill.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

GENERAL LEAVE

Mr. MAHON. Mr. Speaker, I ask further unanimous consent that all Members speaking on the bill may revise

Adair
Adams
Addabbo
Albert
Alexander
Anderson, Calif.
Annunzio
Aspinall
Ayres
Barrett
Bennett
Biaggi
Biester
Blanton
Blatnik
Boggs
Boland
Bolling
Brademas
Brasco
Brooks
Brotzman
Brown, Calif.
Brown, Ohio
Broyhill, Va.
Burke, Mass.
Burleson, Tex.
Burton, Calif.
Button
Byrne, Pa.
Byrnes, Wis.
Caffery
Carey
Casey
Cederberg
Chamberlain
Chisholm
Clark
Clausen,
Don H.
Cleveland
Cohelan
Conte
Conyers
Corman
Cramer
Culver
Cunningham
Daddario
Daniels, N.J.
Delaney
Dent
Dingell
Donohue
Dorn
Dulski
Eckhardt
Edmondson
Edwards, La.
Esch
Evans, Colo.
Evins, Tenn.
Farbstein
Felghan
Findley
Flood
Foley
Ford,
William D.

Gettys
Giaino
Gibbons
Gilbert
Gray
Green, Oreg.
Green, Pa.
Griffiths
Grover
Gude
Hamilton
Hanley
Hanna
Hansen, Wash.
Harrington
Harvey
Hathaway
Hays
Hechler, W. Va.
Heckler, Mass.
Helstoski
Hicks
Holifield
Horton
Howard
Hull
Hungate
Ichord
Jacobs
Jarman
Johnson, Calif.
Jonas
Jones, Ala.
Karth
Kastenmeier
Kazen
Kee
Keith
Kyros
Leggett
Long, Md.
Lowenstein
McClory
McCloskey
McDade
McDonald,
Mich.
McFall
McKneally
Macdonald,
Mass.
MacGregor
Madden
Mahon
Mann
Marsh
Mathias
Matsunaga
May
Mayne
Meeds
Melcher
Mikva
Miller, Calif.
Mills
Minish
Mink
Mollohan
Monagan
Moorhead
Morgan
Morse
Mosher
Moss
Murphy, Ill.
Murphy, N.Y.
Natcher
Nedzi
Nelsen

Nix
Obey
O'Hara
Olsen
O'Neill, Mass.
Ottinger
Passman
Patten
Pelly
Pepper
Perkins
Pettis
Philbin
Pickle
Pike
Pirnie
Podell
Preyer, N.C.
Price, Ill.
Pryor, Ark.
Pucinski
Quie
Randall
Rees
Reid, N.Y.
Reuss
Rhodes
Rivers
Roberts
Robison
Rodino
Roe
Rogers, Colo.
Rogers, Fla.
Rooney, N.Y.
Rooney, Pa.
Rosenthal
Rostenkowski
Roybal
Ryan
St Germain
St. Onge
Sandman
Scheuer
Schwengel
Shipley
Shriver
Sikes
Sisk
Slack
Smith, Iowa
Smith, N.Y.
Springer
Stafford
Staggers
Stanton
Steed
Stephens
Stokes
Stratton
Sullivan
Symington
Taft
Teague, Calif.
Teague, Tex.
Thompson, N.J.
Thompson, Wis.
Tiernan
Tunney
Udall
Ullman
Van Deerlin
Vanik
Vigorito
Waldie
Watts
Whalen
White
Whitten

NAYS—243

and extend their remarks and include extraneous matter.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

REREFERENCE OF S. 3180 TO COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Mr. DULSKI. Mr. Speaker, I ask unanimous consent that the Committee on the District of Columbia be discharged from further consideration of the bill, S. 3180, and that the bill be rereferred to the Committee on Post Office and Civil Service.

Mr. Speaker, we have a letter from the chairman of the committee who is in accord with this request.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 13270, TAX REFORM ACT OF 1969

Mr. MILLS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 13270) to reform the income tax laws, the so-called Tax Reform Act of 1969, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

Mr. VANIK. Mr. Speaker, reserving the right to object, and I do not object at this time, I would like to reserve the right to offer a preferential motion in which I would urge that the conferees or the managers on the part of the House be instructed with respect to increasing exemptions and insisting on the House provisions on the oil and gas depletion allowances.

Mr. Speaker, will such a preferential motion be in order?

The SPEAKER pro tempore. It will be if the unanimous-consent request on the conference is agreed to.

Mr. VANIK. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

Mr. MADDEN. Mr. Speaker, reserving the right to object. I might for the information of the gentleman from Ohio and the House membership state that by reason of the broadcast of the President last Monday night, telling maybe millions of people that he was going to veto the 15-percent raise in social security if it came before him and also that he was going to veto the \$200 tax exemption raise I called a special meeting of the Democratic Steering Committee today. I received expressions of so much consternation and complaint by the Members on this side of the aisle and a great deal of criticism of the broadcast especially where the President referred to a veto these bread and butter issues, we

Democratic Members became alarmed. Approximately 25,500,000 recipients of social security over the Nation also became alarmed at that threat, and millions upon millions of wage earners and salary earners who are paying big taxes, were also shocked. As chairman of the Democratic Steering Committee and because of the pressure of the Members on this side I called a special meeting of the committee this afternoon during which this veto matter was taken up.

Mr. Speaker, I will read the resolution that was adopted—almost unanimously with the exception of one vote:

Resolved, That the House Democratic Steering Committee hereby endorses and recommends enactment of proposed legislation providing for a \$200 increase in the personal income tax exception, to the House Tax Reform Bill and a 15 percent increase in Social Security Insurance System benefits effective as of January 1, 1970.

RAY J. MADDEN,

Chairman,

House Democratic Steering Committee.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

PREFERENTIAL MOTION OFFERED BY MR. VANIK

Mr. VANIK. Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. VANIK moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 13270 be instructed to insist on the House provisions relating to the oil and gas depletion allowance and to provide tax relief by way of increased dependency exemptions.

Mr. VANIK. Mr. Speaker, I would like to be heard on my motion.

The SPEAKER pro tempore. The gentleman from Ohio is recognized.

Mr. VANIK. Mr. Speaker, I offer this motion to instruct the conferees in order to assure that the managers on the part of the House will stand by the House provisions on oil and gas depletion—which the Ways and Means Committee reduced to 20 percent—along with elimination of the foreign depletion allowance.

The action of the House and the Ways and Means Committee was reasonable and a minimum reduction of the special tax privilege of oil and gas. To do less would be to totally disregard one of the most urgent needs of tax reform. There can be no tax reform if oil and gas is to continue to escape a reasonable degree of taxation.

In the action of the Ways and Means Committee, we did not do very much about the intangible drilling costs—we did not do anything about the bookkeeping methods of the industry. In the Ways and Means Committee we gave oil privilege a very light touch. The other body almost totally destroyed our efforts by reducing its tax reform efforts on oil and gas to a "will of the wisp."

The 23-percent reduction of the oil depletion allowance provided by the other body is nothing at all. The testimony before the Ways and Means Committee clearly established that the average industry utilization of the oil depletion allowance is no more than 23 per-

cent. A reduction of the depletion allowance to 23 percent is no burden at all to an industry that has more tax privilege than any other segment of American economic life.

The vote in the Ways and Means Committee on the 20-percent reduction on the depletion allowance was reported out by a vote of 18 to 7. The vote in the House was overwhelming and almost unanimous. It seems to me that the managers on the part of the House must be mindful of the House position and insist on the House provisions which constitutes a modest and reasonable approach to the oil tax issue.

Mr. Speaker, ever since I have been in this Congress I have sponsored legislation to provide for an increase of the dependency tax exemption. It is incredible to assume that any taxpayer or head of family can support his dependents within the \$600 limitation. Inflation has multiplied the problems of family support.

In approaching the problem of tax justice—we must consider how a taxpayer must divide his income in supporting his dependents. Many taxpayers support dependents who would otherwise become public charges. The dependency exemption is in some measure a recognition of this fact.

There are other plans like tax credits, increased deductions, reduced tax rates, but not other alternative can so effectively operate to recognize the assumption of obligation as a matter of family life and family survival.

This year 259 Members of this body have introduced legislation to increase exemptions. Some proposals would increase dependency exemptions as much as \$1,200 per dependent, which is indeed a realistic determination of what it costs to support a dependent under minimum standards today.

In the last several weeks, 233 Members of this body have signed a petition indicating their support of increased exemptions.

Among the various proposals for tax relief—I have found only two proposals which have sought a reduction of tax rates. Quite obviously an overwhelming portion of the Members of this body—prefer increased exemptions as a form of tax relief.

I do not believe we should instruct the managers of the House on the specifics of exemption relief—but the other body has reported out a proposal which can provide a good format for the final proposal. I hope the managers will consider the position of the overwhelming majority.

Mr. Speaker, I have a deep and profound respect for my distinguished chairman, the gentleman from Arkansas (Mr. MILLS). He is a man of unexcelled experience, wisdom, and dedication.

Our distinguished chairman led us through the most thorough and comprehensive review of the tax laws of our country through month after month of careful deliberation. This difficult task constitutes one of the great experiences of my life. It is an experience that occurs perhaps but once in the lifetime of a legislator.

14. 8. 15209

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U. S. DEPARTMENT OF AGRICULTURE



91ST CONGRESS
1ST SESSION

H. R. 15209

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 1969

Read twice and referred to the Committee on Appropriations

AN ACT

Making supplemental appropriations for the fiscal year ending
June 30, 1970, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the following sums are appropriated out of any money
4 in the Treasury not otherwise appropriated, to supply supple-
5 mental appropriations (this Act may be cited as the "Supple-
6 mental Appropriation Act, 1970") for the fiscal year end-
7 ing June 30, 1970, and for other purposes, namely:

CHAPTER I

DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

FLOOD PREVENTION

For an additional amount for "Flood prevention", for emergency measures for runoff retardation and soil erosion prevention, as provided by section 216 of the Flood Control Act of 1950 (33 U.S.C. 701 b-1), \$3,700,000, to remain available until expended.

RELATED AGENCY

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

In addition to the amount made available under this heading for administrative expenses during the current fiscal year, \$211,000 shall be available from assessments for such expenses, including the hire of one passenger motor vehicle.

CHAPTER II

INDEPENDENT OFFICES

CIVIL SERVICE COMMISSION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$430,000, for necessary expenses of the retirement and insurance programs, to be transferred from the trust funds "Civil Service retirement and disability fund", "Employees

1 life insurance fund", "Employees health benefits fund", and
 2 "Retired employees health benefits fund", in such amounts
 3 as may be determined by the Civil Service Commission.

4 FEDERAL LABOR RELATIONS COUNCIL

5 SALARIES AND EXPENSES

6 For expenses necessary to carry out functions of the Civil
 7 Service Commission under Executive Order No. 11491 of
 8 October 29, 1969, \$250,000: *Provided*, That public mem-
 9 bers of the Federal Service Impasses Panel may be paid
 10 travel expenses, including per diem in lieu of subsistence, as
 11 authorized by law (5 U.S.C. 5703) for persons employed
 12 intermittently in the Government service, and compensation
 13 at the rate of not to exceed \$100 per day when engaged in
 14 the performance of the Panel's duties.

15 COMMISSION ON GOVERNMENT PROCUREMENT

16 SALARIES AND EXPENSES

17 For necessary expenses of the Commission on Govern-
 18 ment Procurement, \$500,000.

19 NATIONAL COMMISSION ON CONSUMER FINANCE

20 SALARIES AND EXPENSES

21 For expenses necessary to carry out the provisions of
 22 Title IV of the Act of May 29, 1968 (Public Law 90-321),
 23 \$375,000.

1

CHAPTER III

2

DEPARTMENT OF THE INTERIOR

3

BUREAU OF LAND MANAGEMENT

4

MANAGEMENT OF LANDS AND RESOURCES

5

6

For an additional amount for "Management of lands and resources", \$1,000,000.

7

BUREAU OF INDIAN AFFAIRS

8

EDUCATION AND WELFARE SERVICES

9

10

For an additional amount for "Education and welfare services", \$6,000,000.

11

OFFICE OF TERRITORIES

12

TRUST TERRITORY OF THE PACIFIC ISLANDS

13

14

15

For an additional amount for "Trust Territory of the Pacific Islands", \$7,500,000, to remain available until expended.

16

GEOLOGICAL SURVEY

17

SURVEYS, INVESTIGATIONS, AND RESEARCH

18

19

For an additional amount for "Surveys, investigations, and research", \$700,000.

20

BUREAU OF SPORT FISHERIES AND WILDLIFE

21

MANAGEMENT AND INVESTIGATIONS OF RESOURCES

22

23

For an additional amount for "Management and investigations of resources", \$205,000.

24

CONSTRUCTION

25

26

For an additional amount for "Construction", \$2,200,000, to remain available until expended.

RELATED AGENCIES

NATIONAL COUNCIL ON INDIAN OPPORTUNITY

SALARIES AND EXPENSES

For expenses necessary for the National Council on Indian Opportunity, including services as authorized by U.S.C. 3109, \$286,000.

SMITHSONIAN INSTITUTION

THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

For additional expenses, not otherwise provided, necessary to enable the Board of Trustees of the John F. Kennedy Center for the Performing Arts to carry out the purposes of the Act of September 2, 1958 (72 Stat. 1698), as amended, including construction, to remain available until expended, such amounts which in the aggregate will equal gifts, bequests, and devises of money, securities and other property received by the Board for the benefit of the John F. Kennedy Center for the Performing Arts under such Act, not to exceed \$7,500,000.

CHAPTER IV

DEPARTMENT OF HEALTH, EDUCATION, AND

WELFARE

GALLAUDET COLLEGE

SALARIES AND EXPENSES

For an additional amount for "Gallaudet College, Salaries and expenses", \$75,000.

1

CONSTRUCTION

2

For an additional amount for "Gallaudet College, Construction", \$239,000.

4

CHAPTER V

5

LEGISLATIVE BRANCH

6

HOUSE OF REPRESENTATIVES

7

For payment to Justina Ronan, mother, and to Eileen Burke and Betty Dlouhy, sisters, of Daniel J. Ronan, late a Representative from the State of Illinois, \$42,500, one-half to the mother and one-quarter each to the sisters.

11

CHAPTER VI

12

DEPARTMENT OF STATE

13

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

14

INTERNATIONAL CONFERENCES AND CONTINGENCIES

15

For an additional amount for "International conferences and contingencies", \$350,000, to be derived by transfer from the appropriation for "Contributions to International Organizations", fiscal year 1970: *Provided*, That \$150,000 of the foregoing amount shall be transferred and available only on enactment into law of S.J. Res. 90, 91st Congress, or similar legislation.

22

DEPARTMENT OF JUSTICE

23

IMMIGRATION AND NATURALIZATION SERVICE

24

SALARIES AND EXPENSES

25

For an additional amount for "Salaries and expenses, Immigration and Naturalization Service", \$869,000.

26

BUREAU OF NARCOTICS AND DANGEROUS DRUGS

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses,
Bureau of Narcotics and Dangerous Drugs", \$700,000.

DEPARTMENT OF COMMERCE

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses",
\$418,000.

FACILITIES, EQUIPMENT, AND CONSTRUCTION

For an additional amount for "Facilities, equipment,
and construction", \$440,000, to remain available until
expended.

RELATED AGENCY

SMALL BUSINESS ADMINISTRATION

DISASTER LOAN FUND

For additional capital for the "Disaster loan fund", au-
thorized by the Small Business Act, as amended, \$175,000,-
000, to remain available without fiscal year limitation.

CHAPTER VII

DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, construction,
and improvements", \$1,200,000, to remain available until
expended.

1

CHAPTER VIII

2

TREASURY DEPARTMENT

3

OFFICE OF THE SECRETARY

4

SALARIES AND EXPENSES

5

For an additional amount for "Salaries and expenses",

6

\$600,000.

7

BUREAU OF CUSTOMS

8

SALARIES AND EXPENSES

9

For an additional amount for "Salaries and expenses",

10

including hire of passenger motor vehicles and aircraft; pur-

11

chase of an additional one hundred and forty-eight passenger

12

motor vehicles for police-type use without regard to the gen-

13

eral purchase price limitation for the current fiscal year; and

14

purchase of an additional seven aircraft, \$8,750,000.

15

EXECUTIVE OFFICE OF THE PRESIDENT

16

OFFICE OF INTERGOVERNMENTAL RELATIONS

17

SALARIES AND EXPENSES

18

For expenses necessary for the Office of Intergovern-

19

mental Relations, \$120,000: *Provided*, That this appro-

20

priation shall be available only upon enactment into law

21

of S.J. Res. 117, 91st Congress, or similar legislation.

22

PRESIDENT'S ADVISORY COUNCIL ON EXECUTIVE

23

ORGANIZATION

24

SALARIES AND EXPENSES

25

For necessary expenses of the President's Advisory

26

Council on Executive Organization, including compensation

1 of members of the Council at the rate of \$100 per day
2 when engaged in the performance of the Council's duties,
3 services as authorized by 5 U.S.C. 3109, but at rates for
4 individuals not to exceed \$100 per diem, and employment
5 and compensation of necessary personnel without regard to
6 the civil service and classification laws and the provisions
7 of 5 U.S.C. 5363-5364, \$1,000,000, of which \$500,000
8 shall be for repayment to the appropriation for "Emergency
9 fund for the President", fiscal year 1970.

10 INDEPENDENT AGENCY

11 TAX COURT OF THE UNITED STATES

12 SALARIES AND EXPENSES

13 For an additional amount for "Salaries and expenses",
14 \$65,000.

15 CHAPTER IX

16 CLAIMS AND JUDGMENTS

17 For payment of claims settled and determined by de-
18 partments and agencies in accord with law and judgments
19 rendered against the United States by the United States
20 Court of Claims and United States district courts, as set forth
21 in House Document Numbered 91-199, Ninety-first Congress,
22 \$24,491,433, together with such amounts as may be neces-
23 sary to pay interest (as and when specified in such judg-
24 ments or provided by law) and such additional sums due to
25 increases in rates of exchange as may be necessary to pay

1 claims in foreign currency: *Provided*, That no judgment
2 herein appropriated for shall be paid until it shall become
3 final and conclusive against the United States by failure of the
4 parties to appeal or otherwise: *Provided further*, That unless
5 otherwise specifically required by law or by the judgment,
6 payment of interest wherever appropriated for herein shall
7 not continue for more than thirty days after the date of ap-
8 proval of the Act.

9 CHAPTER X

10 GENERAL PROVISIONS

11 SEC. 1001. During the current fiscal year, restrictions
12 contained within appropriations, or provisions affecting ap-
13 propriations or other funds, limiting the amounts which may be
14 expended for expenses of travel, or for purposes involving
15 expenses of travel, or amounts which may be transferred be-
16 tween appropriations or authorizations available for or in-
17 volving expenses of travel, are hereby increased to the ex-
18 tent necessary to meet increased per diem costs authorized
19 by Public Law 91-114, approved November 10, 1969.

1 SEC. 1002. No part of any appropriation contained in
2 this Act shall remain available for obligation beyond the
3 current fiscal year unless expressly so provided herein.

Passed the House of Representatives December 11,
1969.

Attest:

W. PAT JENNINGS,

Clerk.

91ST CONGRESS
1ST Session

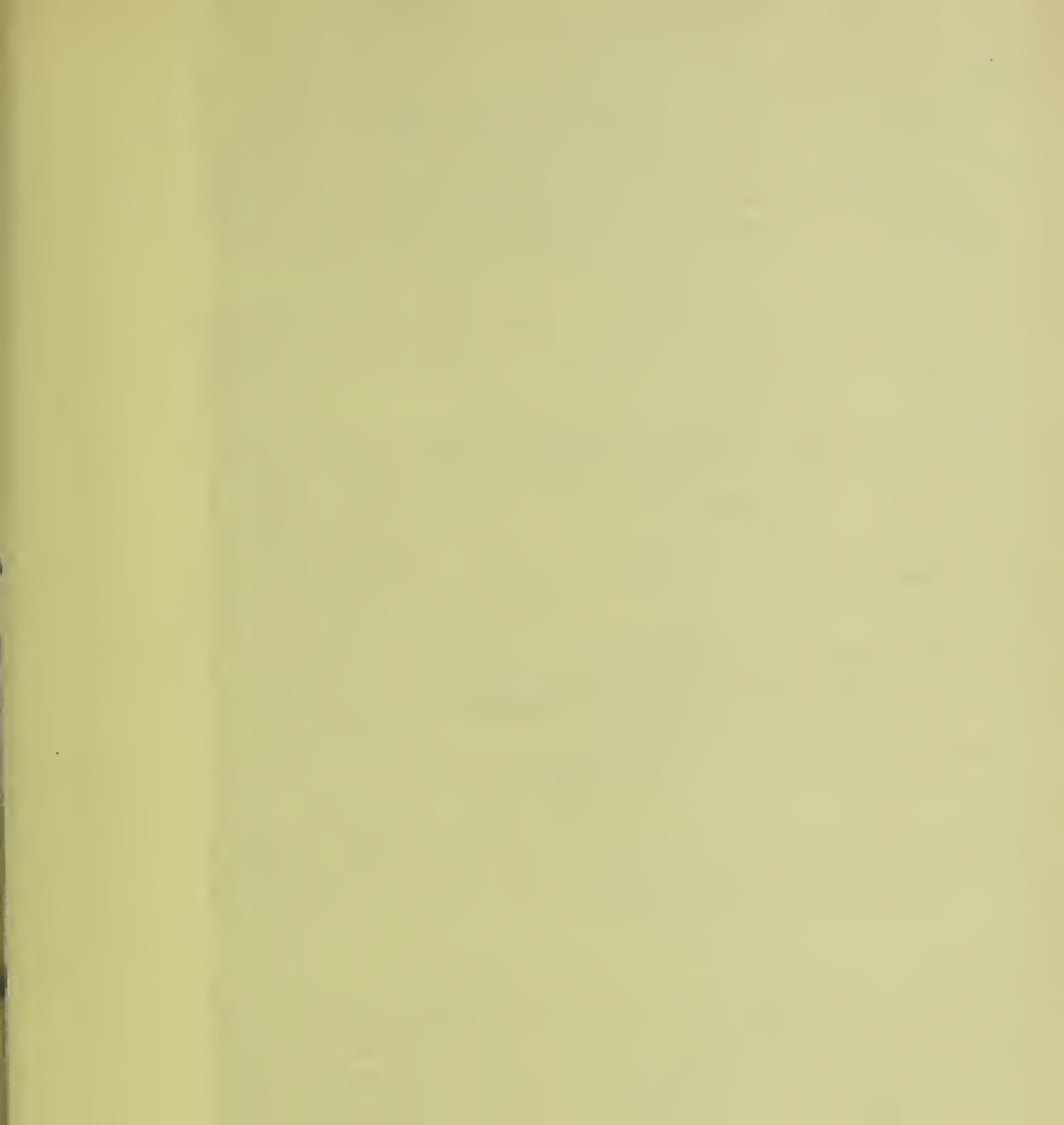
H. R. 15209

AN ACT

Making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

DECEMBER 12, 1969

Read twice and referred to the Committee on
Appropriations



11. APPROPRIATIONS. Rep. Wyman urged adoption of H. Res. 557 which he said would break the appropriations logjam and would effectively enable action on appropriations bills before July 1 in succeeding years. p. H12586
Received the conference report on H. R. 15090, the Defense Department appropriations bill, 1970 (H. Rept. 91-766). p. H12686, pp. H12653-5
Conferees were appointed on H. R. 13111, the Departments of Labor and HEW appropriations bill, 1970. p. H12633
12. POVERTY PROGRAM. Additional conferees were appointed on S. 3016, the poverty authorization bill. p. H12590
Rep. Giaimo expressed his lack of confidence in the poverty program authorization bill. pp. H12590-1
13. MEXICAN-AMERICANS. Rep. Holifield inserted the text of S. 740, the aid to Spanish speaking Americans bill as passed by the House. pp. H12585-6
14. POLLUTION. Rep. Brown, Calif., deplored the environmental pollution in his state. pp. H12672-6
15. IMPORTS. Rep. Wyman called for orderly marketing laws to prevent imports from hurting domestic industry. pp. H12676-7
16. ST. LAWRENCE SEAWAY. Rep. Saylor spoke on the financial condition of the St. Lawrence Seaway project and said the \$500 million white elephant is slowly drowning in its own economic miscalculations. pp. H12677-8
17. AMERICAN INDIANS. Rep. Haley spoke on the problems of the American Indian citing some of the things that have been done for the Indians, which he said he hoped would help set the record straight. pp. H12683-4
18. LEGISLATIVE PROGRAM. Reps. Albert, Ford, and Perkins discussed the legislative program for the remainder of the session and Rep. Albert said that when the House adjourns sine die it expects to reconvene Jan. 19. pp. H12586-7

SENATE

19. APPROPRIATIONS. Passed H. R. 13111, the Labor-HEW bill, by 88 yeas to 4 nays, adopting the Scott amendment which prefaced section 408 of the bill with the words "Except as required by the Constitution," thus limiting the authority to bar funds to certain school districts; the Javits amendment striking out the Secretary's authority to withhold funds from an institution of higher learning where two occasions or more of campus disorder have occurred; the Tydings amendment increasing the National Institute of Child Health and Human Development funds by \$2.8 million; and the Williams (N.J.) amendment increasing funds for the development of programs for the aging by \$600,000. Conferees were appointed. pp. S16941-64, 16968-17002
Passed with amendments H. R. 14794, the Department of Transportation bill, by 80 to 1, adopting all committee amendments en bloc and 4 additional amendments, one of which was the Hart amendment barring funds for Florida airport construction which might have an adverse environmental effect on the ecology of the Everglades. Conferees were appointed. pp. S17005-48

Debate began on H. R. 15149, the foreign aid appropriation bill, making it the pending business for Thursday, Dec. 18, 1969. pp. S17074-75

The Appropriations Committee reported with amendments H. R. 15209, supplemental appropriations for 1970 (Senate report 91-616). p. S17048

20. MIGRANT WORKER. The Committee on Labor and Public Welfare ordered favorably reported, (but did not actually report), with amendments, S. 2660, to extend the Migrant Health Act for 3 years, with increased authorization. p. D1225
21. HUNGER. Sen. Percy endorsed the principles and priorities outlined by the White House Conference on Food, Nutrition & Health in its platform, one provision of which would shift all responsibilities for hunger and malnutrition relief from this Department to the Department of Health, Education & Welfare. pp. S17051-52
22. FISH-FARMING. Sen. Fulbright stated that "probably the fastest growing agricultural industry in Arkansas is fish farming" and inserted a newspaper article reporting on this activity. p. S17056
23. EROSION. Sen. Nelson commented on the frustration of homeowners whose properties are endangered by rising water on the Great Lakes, and the lack of governmental assistance until the erosion has made the area a "disaster area;" inserted a newspaper report on the problem. pp. S17064-65
24. RESERVOIRS. Sen. Fong remarked on the dedication of the new Molokai irrigation project reservoir, noting that the lining of the dam is of 1/32 inch thick butyl, which permits the foundations of the dam to shift in the volcanic soil without loss of water or destruction to the dam. pp. S17067-68
25. FOOD STAMPS. Sen. McGovern replied to the criticism leveled at the Food Stamp bill by Sen. Aiken, pointing out that through controls placed in the hands of the Secretary, food stamps could not be used by the wealthy, or by the poor for the purchase of pleasure boats. p. S17072

EXTENSIONS OF REMARKS

26. FOOD STAMP. Rep. Thompson, N. J., inserted a memorandum from the Puerto Rico Senate in support of the food stamp program. pp. E10740
27. COMMENDATION. Rep. Brademas commended Rep. Perkins for his leadership when the House was considering the OEO bill. p. E10750
28. ENVIRONMENT. Rep. Kastenmeier said that continued plunder of our natural resources is leading to our doom and inserted an article "Not with a Bang but a Gasp." pp. E10750-1
Rep. Zwach said that he hoped the Rules Committee will hold hearings proposing the creation of a Committee on the Environment." p. D10774
29. HUNGER. Rep. Wolff inserted a proposal by two doctors regarding the hunger problem in the U. S. "Food Bank U.S.A." p. E10759

Calendar No. 611

91ST CONGRESS
1ST SESSION

H. R. 15209

[Report No. 91-616]

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 1969

Read twice and referred to the Committee on Appropriations

DECEMBER 17 (legislative day, DECEMBER 16), 1969

Reported by Mr. BYRD of West Virginia, with amendments

[Omit the part struck through and insert the part printed in italic]

AN ACT

Making supplemental appropriations for the fiscal year ending
June 30, 1970, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the following sums are appropriated out of any money
4 in the Treasury not otherwise appropriated, to supply
5 supplemental appropriations (this Act may be cited as the
6 “Supplemental Appropriation Act, 1970”) for the fiscal
7 year ending June 30, 1970, and for other purposes, namely:

1

CHAPTER I

2

DEPARTMENT OF AGRICULTURE

3

SOIL CONSERVATION SERVICE

4

FLOOD PREVENTION

5

For an additional amount for "Flood prevention", for
emergency measures for runoff retardation and soil erosion
prevention, as provided by section 216 of the Flood Control
Act of 1950 (33 U.S.C. 701b-1), \$3,700,000, to remain
available until expended.

10

RELATED AGENCY

11

FARM CREDIT ADMINISTRATION

12

LIMITATION ON ADMINISTRATIVE EXPENSES

13

In addition to the amount made available under this
heading for administrative expenses during the current fiscal
year, \$211,000 shall be available from assessments for such
expenses, including the hire of one passenger motor vehicle.

17

CHAPTER II

18

INDEPENDENT OFFICES

19

CIVIL SERVICE COMMISSION

20

SALARIES AND EXPENSES

21

For an additional amount for "Salaries and expenses",
\$430,000, for necessary expenses of the retirement and in-
surance programs, to be transferred from the trust funds
"Civil Service retirement and disability fund", "Employees

1 life insurance fund", "Employees health benefits fund", and
 2 "Retired employees health benefits fund", in such amounts
 3 as may be determined by the Civil Service Commission.

4 FEDERAL LABOR RELATIONS COUNCIL

5 SALARIES AND EXPENSES

6 For expenses necessary to carry out functions of the Civil
 7 Service Commission under Executive Order No. 11491 of
 8 October 29, 1969, ~~\$250,000~~ \$400,000: *Provided*, That pub-
 9 lic members of the Federal Service Impasses Panel may be
 10 paid travel expenses, including per diem in lieu of subsist-
 11 ence, as authorized by law (5 U.S.C. 5703) for persons em-
 12 ployed intermittently in the Government service, and com-
 13 pensation at the rate of not to exceed ~~\$100~~ \$150 per day
 14 when engaged in the performance of the Panel's duties.

15 COMMISSION ON GOVERNMENT PROCUREMENT

16 SALARIES AND EXPENSES

17 For necessary expenses of the Commission on Govern-
 18 ment Procurement, ~~\$500,000~~ \$2,500,000, *to remain avail-*
 19 *able until June 30, 1972.*

20 NATIONAL COMMISSION ON CONSUMER FINANCE

21 SALARIES AND EXPENSES

22 For expenses necessary to carry out the provisions of
 23 Title IV of the Act of May 29, 1968 (Public Law 90-321).
 24 \$375,000.

1 *TEMPORARY STUDY COMMISSIONS*
2 *COMMISSION ON POPULATION GROWTH AND THE*
3 *AMERICAN FUTURE*
4 *SALARIES AND EXPENSES*

5 *For expenses necessary for the Commission on Popula-*
6 *tion Growth and the American Future, including services as*
7 *authorized by 5 U.S.C. 3109, and hire of passenger motor*
8 *vehicles, \$1,443,000, to remain available until expended:*
9 *Provided, That this paragraph shall be effective only upon*
10 *the enactment into law of S. 2701, 91st Congress, or similar*
11 *legislation.*

12 CHAPTER III
13 DEPARTMENT OF THE INTERIOR
14 BUREAU OF LAND MANAGEMENT
15 MANAGEMENT OF LANDS AND RESOURCES

16 For an additional amount for "Management of lands and
17 resources", ~~\$1,000,000~~ \$1,500,000.

18 BUREAU OF INDIAN AFFAIRS
19 EDUCATION AND WELFARE SERVICES

20 For an additional amount for "Education and welfare
21 services", \$6,000,000.

OFFICE OF TERRITORIES

TRUST TERRITORY OF THE PACIFIC ISLANDS

For an additional amount for "Trust Territory of the Pacific Islands", ~~\$7,500,000~~ \$8,380,000, to remain available until expended.

GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For an additional amount for "Surveys, investigations, and research", \$700,000.

BUREAU OF SPORT FISHERIES AND WILDLIFE

MANAGEMENT AND INVESTIGATIONS OF RESOURCES

For an additional amount for "Management and investigations of resources", ~~\$205,000~~ \$414,000.

CONSTRUCTION

For an additional amount for "Construction", ~~\$2,200,000~~ \$2,600,000, to remain available until expended.

NATIONAL PARK SERVICE

MANAGEMENT AND PROTECTION

For an additional amount for "Management and Protection", \$220,000.

1 MAINTENANCE AND REHABILITATION OF PHYSICAL
2 FACILITIES

3 *For an additional amount for "Maintenance and Re-*
4 *habilitation of Physical Facilities", \$75,000, for reconstruc-*
5 *tion of certain streets in Harpers Ferry, West Virginia.*

6 CONSTRUCTION

7 *For an additional amount for "Construction", \$190,000,*
8 *to remain available until expended.*

9 RELATED AGENCIES

10 DEPARTMENT OF HEALTH, EDUCATION, AND
11 WELFARE

12 HEALTH SERVICES AND MENTAL HEALTH

13 ADMINISTRATION

14 INDIAN HEALTH SERVICES

15 *For an additional amount for "Indian Health Services",*
16 *\$1,000,000.*

17 CONSTRUCTION OF INDIAN HEALTH FACILITIES

18 *For an additional amount for "Indian Health Facili-*
19 *ties", \$1,952,000, to remain available until expended.*

20 NATIONAL COUNCIL ON INDIAN OPPORTUNITY

21 SALARIES AND EXPENSES

22 *For expenses necessary for the National Council on*
23 *Indian Opportunity, including services as authorized by 5*
24 *U.S.C. 3109, \$286,000.*

SMITHSONIAN INSTITUTION

THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

For additional expenses, not otherwise provided, necessary to enable the Board of Trustees of the John F. Kennedy Center for the Performing Arts to carry out the purposes of the Act of September 2, 1958 (72 Stat. 1698), as amended, including construction, to remain available until expended, such amounts which in the aggregate will equal gifts, bequests, and devises of money, securities and other property received by the Board for the benefit of the John F. Kennedy Center for the Performing Arts under such Act, not to exceed \$7,500,000.

CHAPTER IV

DEPARTMENT OF HEALTH, EDUCATION, AND

WELFARE

GALLAUDET COLLEGE

SALARIES AND EXPENSES

For an additional amount for "Gallaudet College, Salaries and expenses", \$75,000.

CONSTRUCTION

For an additional amount for "Gallaudet College, Construction", \$239,000.

1 CHAPTER ~~V~~ IV
2 LEGISLATIVE BRANCH
3 SENATE

4 SALARIES, OFFICERS AND EMPLOYEES
5 OFFICE OF THE VICE PRESIDENT

6 *For an additional amount for "Office of the Vice Presi-*
7 *dent", \$24,966.*

8 HOUSE OF REPRESENTATIVES

9 For payment to Justina Ronan, mother, and to Eileen
10 Burke and Betty Dlouhy, sisters, of Daniel J. Ronan, late a
11 Representative from the State of Illinois, \$42,500, one-half
12 to the mother and one-quarter each to the sisters.

13 CHAPTER ~~VI~~ V
14 DEPARTMENT OF STATE

15 INTERNATIONAL ORGANIZATIONS AND CONFERENCES
16 INTERNATIONAL CONFERENCES AND CONTINGENCIES

17 For an additional amount for "International conferences
18 and contingencies", \$350,000, to be derived by transfer from
19 the appropriation for "Contributions to International Orga-
20 nizations", fiscal year 1970: *Provided*, That \$150,000 of the
21 foregoing amount shall be transferred and available only on
22 enactment into law of S.J. Res. 90, 91st Congress, or
23 similar legislation.

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses,
Immigration and Naturalization Service", \$869,000.

BUREAU OF NARCOTICS AND DANGEROUS DRUGS

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses,
Bureau of Narcotics and Dangerous Drugs", \$700,000.

DEPARTMENT OF COMMERCE

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses",
~~\$418,000~~ \$618,000.

FACILITIES, EQUIPMENT, AND CONSTRUCTION

For an additional amount for "Facilities, equipment,
and construction", ~~\$440,000~~ \$3,582,000, to remain available
until expended.

OFFICE OF STATE TECHNICAL SERVICES

GRANTS AND EXPENSES

For an additional amount for "Grants and expenses",
including grants as authorized by the State Technical Services

1 *Act of 1965 (79 Stat. 679), as amended (82 Stat. 423),*
2 *\$5,000,000.*

3 RELATED AGENCY

4 SMALL BUSINESS ADMINISTRATION

5 DISASTER LOAN FUND

6 For additional capital for the "Disaster loan fund", au-
7 thorized by the Small Business Act, as amended, \$175,000,-
8 000, to remain available without fiscal year limitation.

9 UNITED STATES SECTION OF THE UNITED STATES-
10 MEXICO COMMISSION FOR BORDER DEVELOPMENT
11 AND FRIENDSHIP

12 SALARIES AND EXPENSES

13 *For necessary expenses of the United States Section of*
14 *the United States-Mexico Commission for Border Develop-*
15 *ment and Friendship, including expenses for liquidating its*
16 *affairs, \$159,000, to be available from July 1, 1969, and*
17 *to remain available until January 31, 1970.*

18 CHAPTER VII VI

19 DEPARTMENT OF TRANSPORTATION

20 UNITED STATES COAST GUARD

21 OPERATING EXPENSES

22 *For an additional amount for "Operating expenses",*
23 *\$1,200,000.*

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, construction, and improvements", \$1,200,000, to remain available until expended.

CHAPTER ~~VIII~~ VII

TREASURY DEPARTMENT

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$600,000.

BUREAU OF CUSTOMS

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", including hire of passenger motor vehicles and aircraft; purchase of an additional one hundred and forty-eight passenger motor vehicles for police-type use without regard to the general purchase price limitation for the current fiscal year; and purchase of an additional seven aircraft, \$8,750,000.

UNITED STATES SECRET SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses," including purchase of an additional forty-two motor vehicles for police-type use without regard to the general

1 *purchase price limitation for the current fiscal year,*
2 *\$4,250,000: Provided, That this paragraph shall be avail-*
3 *able only upon enactment into law of H.R. 14944, 91st*
4 *Congress, or similar legislation.*

5 EXECUTIVE OFFICE OF THE PRESIDENT

6 OFFICE OF INTERGOVERNMENTAL RELATIONS

7 SALARIES AND EXPENSES

8 For expenses necessary for the Office of Intergovern-
9 mental Relations, \$120,000: *Provided, That this appro-*
10 *priation shall be available only upon enactment into law*
11 *of S.J. Res. 117, 91st Congress, or similar legislation.*

12 PRESIDENT'S ADVISORY COUNCIL ON EXECUTIVE

13 ORGANIZATION

14 SALARIES AND EXPENSES

15 For necessary expenses of the President's Advisory
16 Council on Executive Organization, including compensation
17 of members of the Council at the rate of \$100 per day
18 when engaged in the performance of the Council's duties,
19 services as authorized by 5 U.S.C. 3109, but at rates for
20 individuals not to exceed \$100 per diem, and employment
21 and compensation of necessary personnel without regard to
22 the civil service and classification laws and the provisions
23 of 5 U.S.C. 5363-5364, \$1,000,000, of which \$500,000
24 shall be for repayment to the appropriation for "Emergency
25 fund for the President", fiscal year 1970.

INDEPENDENT AGENCY

TAX COURT OF THE UNITED STATES

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses",
\$65,000.

CHAPTER ~~IX~~ VIII

CLAIMS AND JUDGMENTS

For payment of claims settled and determined by departments and agencies in accord with law and judgments rendered against the United States by the United States Court of Claims and United States district courts, as set forth in *Senate Document Numbered 91-48*, and in *House Document Numbered 91-199*, Ninety-first Congress, ~~\$24,494,433~~ \$25,021,852, together with such amounts as may be necessary to pay interest (as and when specified in such judgments or provided by law) and such additional sums due to increases in rates of exchange as may be necessary to pay claims in foreign currency: *Provided*, That no judgment herein appropriated for shall be paid until it shall become final and conclusive against the United States by failure of the parties to appeal or otherwise: *Provided further*, That unless otherwise specifically required by law or by the judgment, payment of interest wherever appropriated for herein shall not continue for more than thirty days after the date of approval of the Act.

CHAPTER X IX

GENERAL PROVISIONS

1 SEC. ~~1001~~ 901. During the current fiscal year, restric-
2 tions contained within appropriations, or provisions affecting
3 appropriations or other funds, limiting the amounts which
4 may be expended for expenses of travel, or for purposes in-
5 volving expenses of travel, or amounts which may be trans-
6 ferred between appropriations or authorizations available for
7 or involving expenses of travel, are hereby increased to the
8 extent necessary to meet increased per diem costs authorized
9 by Public Law 91-114, approved November 10, 1969.

10 SEC. ~~1002~~ 902. No part of any appropriation contained
11 in this Act shall remain available for obligation beyond the
12 current fiscal year unless expressly so provided herein.

13 SEC. 903. *The appropriations, authorizations, and au-*
14 *thority with respect thereto in this Act, the Department of*
15 *Defense Appropriation Act, 1970, the District of Columbia*
16 *Appropriation Act, 1970, the Foreign Assistance and Re-*
17 *lated Agencies Appropriation Act, 1970, the Departments*
18 *of Labor, and Health, Education, and Welfare Appropria-*
19 *tion Act, 1970, the Military Construction Appropriation*
20 *Act, 1970, and the Department of Transportation Act, 1970,*
21 *shall be available from the sine die adjournment of the first*
22 *session of the Ninety-first Congress for the purposes provided*
23 *in such appropriations, authorizations, and authority. All*

1 obligations incurred during the period between the sine die
2 adjournment of the first session of the Ninety-first Congress
3 and the dates of enactment of such Acts in anticipation of
4 such appropriations, authorizations, and authority are hereby
5 ratified and confirmed if in accordance with the terms of
6 such Acts or the terms of Public Law 91-33, Ninety-first
7 Congress, as amended.

8 SEC. 904. In view of and in confirmation of the authority
9 invested in the Comptroller General of the United States by
10 the Budget and Accounting Act of 1921, as amended, no
11 part of the funds appropriated or otherwise made available
12 by this or any other Act shall be available to finance, either
13 directly or through any Federal aid or grant, any contract
14 or agreement which the Comptroller General of the United
15 States holds to be in contravention of any Federal statute.

Passed the House of Representatives December 11,
1969.

Attest:

W. PAT JENNINGS,

Clerk.

[Report No. 91-616]

AN ACT

Making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

DECEMBER 12, 1969

Read twice and referred to the Committee on
Appropriations

DECEMBER 17 (legislative day, DECEMBER 16), 1969

Reported with amendments





Calendar No. 611

91ST CONGRESS }
1st Session }

SENATE }

REPORT
No. 91-616

SUPPLEMENTAL APPROPRIATION BILL, 1970

DECEMBER 17 (legislative day DECEMBER 16), 1969.—Ordered to be printed

Mr. BYRD of West Virginia, from the Committee on Appropriations,
submitted the following

REPORT

[To accompany H.R. 15209]

The Committee on Appropriations, to which was referred the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the changes recommended:

Amount of budget estimates to Senate.....	¹ \$314, 597, 852
Bill as passed by the House.....	244, 225, 933
Increases over House bill recommended by Senate committee.....	23, 211, 385
Decrease under budget estimates recommended by Senate committee (net).....	47, 160, 534
Total Senate committee bill as reported.....	267, 437, 318

¹ Includes \$16,050,591 submitted to the Senate and not considered by the House.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL—SUMMARY

Chapter No.	Department or activity	Budget estimate	Recommended in House bill	Amount recommended by Senate committee	Increase (+) or decrease (—), Senate bill compared with—	
					Budget estimate	House bill
I	Agriculture:					
	New budget (obligational) authority --- <i>Limitation on administrative expenses</i> ---	\$3, 700, 000 (211, 000)	\$3, 700, 000 (211, 000)	\$3, 700, 000 (211, 000)	----- -----	----- -----
II	Independent Offices—HUD:					
	New budget (obligational) authority --- <i>By transfer</i> -----	4, 718, 000 (430, 000)	1, 125, 000 (430, 000)	4, 718, 000 (430, 000)	----- -----	+\$3, 593, 000 -----
III	Interior:					
	New budget (obligational) authority --- Labor-Health, Education, and Welfare:	27, 071, 000	25, 391, 000	30, 817, 000	+3, 746, 000	+5, 426, 000
(IV)	New budget (obligational) authority ---	-----	314, 000	-----	-----	--314, 000
IV	Legislative:					
	New budget (obligational) authority --- State, Justice, Commerce, and Judiciary:	-----	42, 500	67, 466	+67, 466	+24, 966
V	New budget (obligational) authority --- <i>By transfer</i> -----	236, 532, 000 (400, 000)	177, 427, 000 (350, 000)	185, 928, 000 (350, 000)	-50, 604, 000 (-50, 000)	+8, 501, 000 -----

VI	Transportation:	1, 500, 000	1, 200, 000	2, 400, 000	+ 900, 000	+ 1, 200, 000
	New budget (obligational) authority----					
VII	Treasury-Post Office:	16, 055, 000	10, 535, 000	14, 785, 000	- 1, 270, 000	+ 4, 250, 000
	New budget (obligational) authority----					
VIII	Claims and judgments:	25, 021, 852	24, 491, 433	25, 021, 852	-----	+ 530, 419
	New budget (obligational) authority----					
	Grand total:					
	New budget (obligational) au- thority-----	314, 597, 852	244, 225, 933	267, 437, 318	- 47, 160, 534	+ 23, 211, 385
	Limitation on administrative ex- penses.	(211, 000)	(211, 000)	(211, 000)	-----	-----
	By transfer-----	(830, 000)	(780, 000)	(780, 000)	(- 50, 000)	-----

CHAPTER I
DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE
FLOOD PREVENTION

1970 regular Appropriation Act.....	\$20, 223, 000
Supplemental estimate (H. Doc. 91-199).....	3, 700, 000
House bill.....	3, 700, 000
Committee recommendation.....	3, 700, 000

An additional appropriation of \$3,700,000 is recommended under this heading for the cost of installing emergency conservation measures for runoff retardation and soil erosion prevention in Virginia. The funds are required to install an estimated 574 miles of channel improvement, to construct 15 debris and grade stabilization structures, and to provide 35,000 acres of emergency vegetative cover on adjacent denuded land areas devastated by Hurricane Camille.

Severe flood damage in the James River Basin from the hurricane occurred on August 19-20 where rainfall ranging from 6 to 31 inches fell in a 6-hour period, causing property damage in the disaster-designated 12 counties in excess of \$113 million and a loss of 150 lives.

The regular 1970 Appropriation Act provided \$300,000 for emergency conservation measures under section 216 of the Flood Prevention Act of 1950. This amount plus the \$300,000 balance of emergency funds appropriated earlier this year have already been made available for emergency rehabilitation. The \$3,700,000 recommended in the accompanying bill, which is the amount of the estimate and the amount provided in the House bill, will finance the emergency conservation measures required to restore damaged stream channels and preclude further damage and hazards to life in the affected area. Other agencies of the Department are participating by providing emergency farm credit as well as to share in the cost of restoring damaged farmland.

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATION EXPENSES

1970 regular act limitation.....	(\$3, 628, 000)
Supplemental estimate (H. Doc. 91-199).....	(211, 000)
House bill.....	(211, 000)
Committee recommendation.....	(211, 000)

The committee recommends the supplemental estimate of \$211,000, as proposed in the House bill, for the limitation on administrative expenses.

The administrative expenses of the Farm Credit Administration are derived from assessments made upon the member banks and associations. The request for the supplemental estimate was approved by the Federal Farm Credit Board. The increased funds are to be used primarily to strengthen the fiscal audit and examination program of the farm credit system.

CHAPTER II

INDEPENDENT OFFICES

CIVIL SERVICE COMMISSION

SALARIES AND EXPENSES LIMITATION FOR ADMINISTRATION OF RETIREMENT AND INSURANCE PROGRAMS

The committee concurs with the House allowance of the full amount of the request in House Document 91-199 for additional authority of \$430,000 to be transferred from trust funds, to be used for administrative expenses necessary to carry out provisions of the Civil Service Retirement Amendments of 1969.

FEDERAL LABOR RELATIONS COUNCIL

SALARIES AND EXPENSES

Restoration of \$150,000 is recommended by the committee, to provide the full amount of the supplemental estimate in House Document 91-199 of \$400,000 for services and staff assistance to the Federal Labor Relations Council, established by Executive Order 11491 on October 29, 1969, and scheduled to begin functioning on January 1, 1970. The committee believes that the \$400,000 recommended for the remainder of fiscal year 1970 represents the minimum funds required to begin operations.

A Federal service impasses panel is established as an agency within the Council to consider and resolve impasses between labor organizations and agency management, including arbitration or third-party factfinding with recommendations when necessary. To compensate public members when employed on the Panel, the committee recommends \$150 per day, as opposed to \$100 per day allowed by the House. The committee is advised that while \$100 per day would be adequate for the employment of consultants, the members of this Panel will be persons of high reputation for impartiality and skill in Government and labor-management relations and should be compensated at a rate not to exceed \$150 per day since this is public service, although persons with the reputation and arbitration skills required for the function will usually be receiving much higher fees in private arbitration practice. The committee is further advised that the current rate authorized for employee grievance arbitrations by the Department of Defense, which has had nearly all such cases in the Federal program, so far, is \$150 per day, and the average daily fees paid for arbitrators on a national basis is just under that amount for services in the settlement of employee grievances under existing contracts, while the members of this Panel will have the more demanding role of resolving deadlocks on new contract terms.

COMMISSION ON GOVERNMENT PROCUREMENT

SALARIES AND EXPENSES

Restoration of \$2 million is recommended by the committee, to provide the full amount of the budget estimate in House Document No. 91-199 of \$2,500,000 for salaries and expenses of the recently

authorized Commission on Government Procurement. These funds are to remain available until June 30, 1972, to cover the 2-year life of the commission.

The committee agrees with the House that substantial savings can be realized from the studies and investigations to be made by the commission, and that the proposed comprehensive review and analysis of Government procurement statutes, policies, and practices, with a view to recommending improvements is most timely.

The committee believes that appropriation of the full sum requested will enable the commission to plan its work intelligently and to attract the high caliber personnel necessary for the vitally important job to be done.

NATIONAL COMMISSION ON CONSUMER FINANCE

SALARIES AND EXPENSES

The committee concurs with the House allowance of the full amount of the supplemental estimate in House Document 91-199 of \$375,000 to initiate the work of the National Commission on Consumer Finance, authorized by title IV of the Consumer Credit Protection Act of 1968.

Among the areas to be covered are the adequacy of existing arrangements to provide consumer credit at reasonable rates, the adequacy of existing supervisory and regulatory mechanisms to protect the public from unfair practices, and the desirability of Federal chartering of consumer finance companies.

COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

SALARIES AND EXPENSES

The committee recommends an appropriation of \$1,443,000 for salaries and expenses of the Commission on Population Growth and the American Future, the full amount of the budget estimate to cover the 2-year life of the commission requested in Senate Document No. 91-44.

The purpose of the Commission is to conduct an inquiry into and make recommendations about the probable course of population growth in the United States between now and the year 2000, the resources that will be required to deal with the anticipated growth in the population, and the ways in which population growth may affect the activities of Federal, State, and local governments.

It is anticipated that the Commission could be fully operational by March 1, 1970, and will make an interim report after the first year and a final report after the second year.

Authorization for the Commission passed the Senate September 29, was reported to the House December 10, and is pending on the House Calendar.

CHAPTER III
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MANAGEMENT OF LANDS AND RESOURCES

Appropriation, 1970.....	\$52, 573, 000
Supplemental estimate, 1970 (H. Doc. 91-199).....	1, 500, 000
House allowance.....	1, 000, 000
Committee recommendation.....	1, 500, 000

The committee recommends an appropriation of \$1,500,000, which is \$500,000 more than the House allowance and the same as the budget estimate. This amount will permit the Bureau of Land Management to review construction and operating plans prior to construction of the 800-mile trans-Alaska pipeline; to establish detailed stipulations and guidelines for environmental protection; and to inspect and monitor construction to insure that the natural resources are protected. It is now anticipated that the right-of-way permit for the pipeline will be issued early next year for construction beginning in March 1970.

In the hearings on the budget estimate for work necessary in connection with the trans-Alaska pipeline system application the question was raised as to charging TAPS for the costs to the Federal government of this work. On December 10, 1969, the Solicitor, Department of the Interior, in a memorandum to the Secretary of the Interior, stated:

Based on all of the foregoing, it is my opinion that you have the discretionary authority to charge a pipeline right-of-way applicant for the extraordinary costs incurred by the Department. The peculiar circumstances of the proposed trans-Alaska pipeline would warrant the exercise of this discretion and the imposition of such charges.

The problems presented by the TAPS application are unique and greater than those involved in any land use application previously presented to this Department. Such problems result both from the magnitude of the project and from the nature of the Alaskan terrain and environment through which the pipeline will pass if a permit is issued. The stipulations to be made a part of any right-of-way permit that may issue are unique and contain comprehensive and detailed provisions; they will require extensive supervisory activities by personnel of this Department during construction and operation of the pipeline.

The TAPS application and project require the Department to incur extraordinary expenses; these are necessitated by the unique problems presented by the TAPS application and, except for that application, would not be incurred by the Department in its normal program activities. Therefore, under these circumstances, it would be proper for you to exercise the authority granted the Secretary * * * and to assess such extraordinary charges to TAPS if a permit issues to them.

The committee urges that the trans-Alaska pipeline system be charged to the extent permitted by law the extraordinary costs of expenses incurred by all Department of the Interior agencies because of the TAPS right-of-way application.

BUREAU OF INDIAN AFFAIRS

EDUCATION AND WELFARE SERVICES

Appropriation, 1970-----	\$176, 703, 000
Supplemental estimate, 1970 (H. Doc. 91-199)-----	6, 000, 000
House allowance-----	6, 000, 000
Committee recommendation-----	6, 000, 000

The committee recommends an appropriation of \$6 million for the general assistance program and for the child welfare assistance program. This amount is required to meet a drastic increase in the case load primarily on the Navajo Reservation and in State public assistance standards which are followed by the Bureau of Indian Affairs.

OFFICE OF TERRITORIES

TRUST TERRITORY OF THE PACIFIC ISLANDS

Appropriation, 1970-----	\$40, 612, 000
Supplemental estimate, 1970 (H. Doc. 91-199)-----	8, 380, 000
House allowance-----	7, 500, 000
Committee recommendation-----	8, 380, 000

The committee recommends an appropriation of \$8,380,000, the amount of the budget estimate and \$880,000 more than the House allowance, to initiate a new orientation and to initiate action programs set forth by a special development task force. These programs relate to medical and educational supplies, sea transport, police and fire equipment, roads, potable water, electric power, future political status, and land survey and title registration.

The amount (\$300,000) allowed for advance planning and engineering shall be allocated as follows: \$108,000 for primary roads; \$96,000 for the Moen water project; \$84,000 for the Meon sewer project; and \$12,000 for expansion and construction of the Micronesian Teacher Education College.

GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

Appropriation, 1970-----	\$95, 755, 000
Supplemental estimate, 1970 (H. Doc. 91-199)-----	700, 000
House allowance-----	700, 000
Committee recommendation-----	700, 000

The committee recommends an appropriation of \$700,000 to gather data needed with respect to location, design, and construction of facilities, management of publicly-owned land and resources, and environmental protection in connection with the proposed construction of the 800-mile trans-Alaska pipeline. This is the same as the budget estimate and the allowance of the House of Representatives. The committee approves the reprograming as outlined on page 147 of the Senate hearings.

BUREAU OF SPORT FISHERIES AND WILDLIFE

MANAGEMENT AND INVESTIGATIONS OF RESOURCES

Appropriation, 1970-----	\$48, 850, 000
Supplemental estimate, 1970 (H. Doc. 91-199)-----	205, 000
House allowance-----	205, 000
Committee recommendation-----	414, 000

The committee recommends an appropriation of \$414,000 for management and investigations of resources. This is \$209,000 more than the allowance of the House of Representatives and the budget estimate. This sum will provide \$205,000 for investigating the effects on fish and wildlife resources of the proposed construction of an 800-mile-long Trans-Alaska pipeline. Of this amount, \$90,000 will be transferred to the Bureau of Commercial Fisheries for appraisal of procedures to avoid damage to commercial fisheries from construction and oil transportation operations.

Also, the committee proposal will make available \$214,000 for preservation of the steamboat *Bertrand* and its cargo, DeSoto National Wildlife Refuge, Nebraska.

CONSTRUCTION

Appropriation, 1970-----	\$1, 959, 000
Supplemental estimate, 1970 (H. Doc. 91-199)-----	2, 500, 000
House allowance-----	2, 200, 000
Committee recommendation-----	2, 600, 000

The committee recommends an appropriation of \$2,600,000 for construction activities of the Bureau of Sport Fisheries and Wildlife. This is \$100,000 more than the budget estimate and \$400,000 more than the House allowance.

This amount will provide \$2,500,000 to repair and prevent further flood and storm damages at three national fish hatcheries and 10 national wildlife refuges; and to repair damages resulting from a major forest fire on the Kenai National Moose Range.

The committee's recommendation also includes \$100,000 for planning permanent storage and display facilities for the steamboat *Bertrand* and artifacts found in the vessel.

NATIONAL PARK SERVICE

MANAGEMENT AND PROTECTION

Appropriation, 1970-----	\$49, 100, 000
Supplemental estimate, 1970-----	None
House allowance-----	Not considered
Committee recommendation-----	220, 000

The committee recommends an appropriation of \$220,000 to initiate a management program for black and grizzly bears in Yellowstone National Park, which is necessary in order to eliminate hazards and threats to the public resulting from the activities of these animals.

MAINTENANCE AND REHABILITATION OF PHYSICAL FACILITIES

Appropriation, 1970-----	\$40, 000, 000
Supplemental estimate, 1970-----	None
House allowance-----	Not considered
Committee recommendation-----	75, 000

The committee proposes an appropriation of \$75,000 to permit the National Park Service to reconstruct Jackson, McDowell, and Lancaster Streets, and Fillmore Street from Taylor Street to York Street, in Harpers Ferry, W. Va. This care is made necessary by the heavy use of these streets by visitors to the Harpers Ferry National Historical Park.

CONSTRUCTION

Appropriation, 1970.....	\$7, 700, 000
Supplemental estimate, 1970.....	(1)
House allowance.....	(2)
Committee recommendation.....	190, 000

¹ None.

² Not considered.

The Frederick Douglass Home in Washington, D.C., was established as a part of the national park system in 1962. In order to initiate restoration of this facility the committee recommends that \$190,000 be appropriated.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

INDIAN HEALTH SERVICES

Appropriation, 1970.....	\$99, 481, 000
Supplemental estimate, 1970.....	(1)
House allowance.....	(1)
Committee recommendation.....	1, 000, 000

¹ None.

The committee recommends an appropriation of \$1,000,000 for contract medical care for Indians. The current available appropriation is sufficient only to provide for about two-thirds of known needs. The amount proposed by the committee will permit medical care at the same level as provided in fiscal year 1969.

INDIAN HEALTH FACILITIES

Appropriation, 1970.....	\$19, 000, 000
Supplemental estimate, 1970.....	(1)
House allowance.....	(1)
Committee recommendation.....	1, 952, 000

¹ None.

The committee proposes an appropriation of \$1,952,000 to allow the Indian Health Service to participate under the provisions of Public Law 85-151 in the construction of the Fairbanks, Alaska, Community Hospital so as to assure 18 beds and clinic space for Alaska natives.

NATIONAL COUNCIL ON INDIAN OPPORTUNITY

SALARIES AND EXPENSES

Appropriation, 1970.....	\$14, 000
Supplemental estimate, 1970 (H. Doc. 91-199).....	286, 000
House allowance.....	286, 000
Committee recommendation.....	286, 000

The committee recommends an appropriation of \$286,000 for salaries and expenses of the National Council on Indian Opportunity during the remaining months of fiscal year 1970. This is the same as the allowance of the House of Representatives and the budget estimate. The authorized appropriation for the full fiscal year is \$300,000.

SMITHSONIAN INSTITUTION

JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

Appropriation, 1970-----	(1)
Supplemental estimate, 1970 (H. Doc. 19-199)-----	\$7, 500, 000
House allowance-----	7, 500, 000
Committee recommendation-----	7, 500, 000

The committee recommends an appropriation of \$7,500,000, the amount of the House allowance and the budget estimate, for the John F. Kennedy Center for the Performing Arts. This amount is the Government's share needed to match non-Federal contributions to meet the additional cost of constructing the Center, which now totals \$66,200,000. The committee is assured that no additional Federal funds will be requested.

CHAPTER IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

GALLAUDET COLLEGE

The House included in the bill \$75,000 under the head, "Salaries and Expenses," and \$239,000 under the head, "Construction," for Gallaudet College. In its report, the House described these funds as being necessary to strengthen the protection of students at Gallaudet College for the Deaf, which is located in the District of Columbia.

The \$75,000 is to expand the present security guard force from six to 22, and the \$239,000 for "Construction" is to install a new lighting system and to provide more adequate fencing along the perimeter of the college's 93-acre campus.

Inasmuch as the Subcommittee on the Departments of Labor and Health, Education, and Welfare of the Senate Committee on Appropriations has included identical sums in the Departments of Labor and Health, Education, and Welfare appropriation bill for fiscal year 1970 (H.R. 13111), the funds included for this purpose in the present bill have been deleted by the committee.

CHAPTER IV

LEGISLATIVE BRANCH

SENATE

OFFICE OF THE VICE PRESIDENT

The committee recommends an additional appropriation of \$24,966 for the Office of the Vice President.

CHAPTER V

DEPARTMENT OF STATE

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

INTERNATIONAL CONFERENCES AND CONTINGENCIES

1970 appropriation-----	\$1, 800, 000
1970 supplemental estimate (H. Doc. 91-199)-----	¹ (400, 000)
House allowance-----	(350, 000)
Committee recommendation-----	(350, 000)

¹ To be derived by transfer from "Contributions to International Organizations."

The committee agrees with the House in including language in the bill to authorize the sum of \$350,000 to be transferred to this activity from the appropriation for "Contributions to International Organizations". The additional funds will be used to cover the costs of United States hostship of (1) the Third Preparatory Committee meeting and the resumed Plenipotentiary Conference on Definitive Arrangements for the International Telecommunications Satellite Consortium (Intelsat); and (2) the Diplomatic Conference to Negotiate a Patent Cooperation Treaty.

During the hearing on this supplemental request it was apparent that expenses were being incurred by the Department for the Intelsat Conference prior to presenting the request for funds to the committee. It was also apparent that the regular appropriations subcommittees of the House and Senate concerned with the Department's appropriations had not been informed of this requirement before commitment to host the third Intelsat meeting had been made. This practice could result in serious impairment of the normal activities funded from this appropriation. The committee directs that the regular subcommittees be informed of any such future requirements at the earliest practicable date.

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

SALARIES AND EXPENSES

1970 appropriation	\$93, 750, 000
1970 supplemental estimate (H. Doc. 91-199)	869, 000
House allowance	869, 000
Committee recommendation	869, 000

The committee recommends \$869,000, the budget estimate and the House allowance to reimburse the Immigration and Naturalization Service for its intensified efforts against smuggling people and narcotics, marihuana, and other dangerous drugs across the southern border during "Operation Intercept."

BUREAU OF NARCOTICS AND DANGEROUS DRUGS

SALARIES AND EXPENSES

1970 appropriation	\$25, 317, 000
1970 supplemental estimate (H. Doc. 91-199)	700, 000
House allowance	700, 000
Committee recommendation	700, 000

The committee recommends the sum of \$700,000, the supplemental budget estimate and the House allowance to enable the Bureau of Narcotics and Dangerous Drugs to intensify its efforts in immobilizing major drug conspiracies in the United States through the purchase of evidence and the payments of informants.

DEPARTMENT OF COMMERCE

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

SALARIES AND EXPENSES

1970 appropriation-----	\$121, 350, 000
1970 supplemental estimate (H. Doc. 91-199)-----	1, 492, 000
House allowance-----	418, 000
Committee recommendation-----	618, 000

The committee recommends the sum of \$618,000 which amount is \$874,000 below the budget estimate and \$200,000 over the House allowance. Of the sum recommended, \$418,000 is to restore high priority items destroyed by Hurricane Camille, and \$200,000 is to cover the necessary costs of manning weather forecasting equipment to be installed on a weather ship which will be stationed in the Atlantic Ocean south of New England. Ten new positions are provided. The ship will be manned and operated by the Coast Guard.

RESEARCH AND DEVELOPMENT

1970 appropriation-----	\$24, 300, 000
1970 supplemental estimate (H. Doc. 91-199)-----	330, 000
House allowance-----	(¹)
Committee recommendation-----	(¹)

¹ None.

The committee agrees with the House in disallowing the supplemental request for research and development at this time.

FACILITIES, EQUIPMENT, AND CONSTRUCTION

1970 appropriation-----	\$4, 385, 000
1970 supplemental estimate (H. Doc. 91-199)-----	2, 982, 000
House allowance-----	440, 000
Committee recommendation-----	3, 582, 000

For facilities, equipment, and construction, the committee recommends \$3,582,000 which sum is \$600,000 over the supplemental estimate and \$3,142,000 over the House. Of the sum recommended, \$2,982,000 will provide for the restoration of facilities and equipment destroyed by Hurricane Camille; replacement and augmentation of equipment on three research aircraft used for hurricane reconnaissance; and additional facilities, equipment, and construction for improvement in hurricane related and weather and flood warning services. No new positions are requested. The balance of \$600,000 is for the acquisition and installation of meteorological equipment on a weather ship which will be operated by the Coast Guard and stationed in the Atlantic Ocean south of New England.

OFFICE OF STATE TECHNICAL SERVICES

GRANTS AND EXPENSES

1970 appropriation-----	\$290, 000
1970 supplemental estimate (H. Doc. 91-199)-----	5, 000, 000
House allowance-----	(¹)
Committee recommendation-----	5, 000, 000

¹ None.

The committee approves the supplemental budget request of \$5 million to provide matching technical service grants and related activities for the 50 States, the District of Columbia, Guam, the Virgin Islands, Puerto Rico, and regional and national programs of special merit. The regular 1970 appropriation bill provided \$290,000 to cover the administrative expenses. This supplemental request was not approved by the House. Accordingly the committee has inserted the following language in the bill:

OFFICE OF STATE TECHNICAL SERVICES

GRANTS AND EXPENSES

For an additional amount for "Grants and expenses", including grants as authorized by the State Technical Services Act of 1965 (79 Stat. 679), as amended (82 Stat. 423), \$5,000,000.

RELATED AGENCIES

SMALL BUSINESS ADMINISTRATION

DISASTER LOAN FUND

1970 appropriation.....	(1)
1970 supplemental estimate (H.Doc. 91-199).....	\$225, 000, 000
House allowance.....	175, 000, 000
Committee recommendation.....	175, 000, 000

¹ None.

The committee recommends the House allowance of \$175 million for the "Disaster loan fund" so as to provide assistance on favorable terms to victims of recent natural disasters primarily Hurricane Camille.

UNITED STATES SECTION OF THE UNITED STATES-MEXICO COMMISSION FOR BORDER DEVELOPMENT AND FRIENDSHIP

SALARIES AND EXPENSES

1970 appropriation.....	None
1970 supplemental estimate (S.Doc. 91-47).....	\$159, 000
House allowance.....	(1)
Committee recommendation.....	159, 000

¹ Not considered by House.

The committee recommends the supplemental estimate of \$159,000, of which \$55,000 is to pay termination costs for the employees of the Commission and other contractual obligations. The additional \$104,000 is required to reimburse the Treasury for funds expended under the provisions of the continuing resolution (Public Law 91-33) between July 1 and November 5, 1969 on which date the Commission ceased to have any further obligating authority. This item was not considered by the House. Accordingly, the committee has included the following language in the bill:

UNITED STATES SECTION OF THE UNITED STATES-
MEXICO COMMISSION FOR BORDER DEVELOPMENT
AND FRIENDSHIP

Salaries and Expenses

For necessary expenses of the United States Section of the United States-Mexico Commission for Border Development and Friendship, including expenses of liquidating its affairs, \$159,000, to be available from July 1, 1969, and to remain available until January 31, 1970.

CHAPTER VI

DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

OPERATING EXPENSES

The committee recommends an appropriation of \$1,200,000 for the Coast Guard's share of the funding of the *Nantucket* weathership. The weathership is jointly funded by the Coast Guard and the Environmental Science Services Administration. The appropriation provides \$360,000 to reactivate and relocate a presently decommissioned cutter and \$840,000 for operating costs.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

1970 committee recommendation-----	\$75, 700, 000
Supplemental budget estimate-----	1, 500, 000
House allowance-----	1, 200, 000
Committee recommendation-----	1, 200, 000

The committee concurs with the House recommendation of \$1,200,000 to restore and repair damages inflicted upon Coast Guard facilities in the Mississippi-Louisiana area by Hurricane Camille. The committee and House recommendation is \$300,000 below the budget estimate. The Coast Guard did not appeal the reduction.

CHAPTER VII

TREASURY DEPARTMENT

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

1970 appropriation-----	\$8, 600, 000
Supplemental budget request-----	620, 000
House allowance-----	600, 000
Committee recommendation-----	600, 000

The committee recommends a supplemental appropriation of \$600,000, a reduction of \$20,000 in the budget estimates, for "Salaries and expenses, Office of the Secretary."

The Office of the Secretary operates the Treasury Law Enforcement School which provides basic and specialized training for law enforcement agents of Customs, Internal Revenue Service, the Secret Service, and other Government and State agencies.

The appropriation recommended is to hire 13 new instructors; support personnel, training equipment, ammunition, etc., to be able to train the 297 additional customs agents planned.

BUREAU OF CUSTOMS

SALARIES AND EXPENSES

1970 appropriation.....	\$107, 551, 000
Supplemental budget request.....	9, 500, 000
House allowance.....	8, 750, 000
Committee recommendation.....	8, 750, 000

The committee recommends \$8,750,000, the House allowance, for Salaries and Expenses, Bureau of Customs. The amount recommended is \$750,000 under the budget estimate of \$9,500,000.

The funds recommended are to increase the effectiveness of Treasury-Customs enforcement so as to reduce to the lowest practical level the smuggling of narcotics into the United States.

The committee, like the House, allows the full number of positions requested (915) together with the automobiles, aircraft and related equipment and the reduction imposed is based on the lapse of time since the estimates were prepared and slippage that may have occurred.

U.S. SECRET SERVICE

SALARIES AND EXPENSES

1970 appropriation.....	\$26, 871, 000
Supplemental budget request.....	4, 750, 000
House allowance.....	(¹)
Committee recommendation.....	4, 250, 000

¹ Not considered.

The committee recommends a supplemental appropriation of \$4,250,000 for salaries and expenses of the Secret Service. The amount recommended is \$500,000 under the estimate of \$4,750,000. The request is contained in Senate Document No. 91-46 and it was neither heard nor considered by the House.

The amount allowed is considered sufficient to cover the costs and related expenses for the 624 additional new positions (514 police officers and 100 support personnel) requested for the protection of foreign diplomatic missions (embassies) in the Washington, D.C., metropolitan area by the newly established Executive Protective Service. The Service will have as its nucleus the 274 members of the White House Police, which will be fully incorporated into the new Service.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

1970 appropriation.....	
Supplemental budget request.....	\$120, 000
House allowance.....	120, 000
Committee recommendation.....	120, 000

The committee recommends \$120,000, the budget estimate and House allowance, for activities under this head.

This new office established by Executive Order No. 11455, February 14, 1969, is to advise and assist the Vice President with his liaison responsibilities with executive and legislative officials of State and local governments.

The Office will be staffed with nine permanent employees.

PRESIDENT'S ADVISORY COUNCIL ON EXECUTIVE ORGANIZATION

SALARIES AND EXPENSES

1970 appropriation	-----	-----
Supplemental budget request	-----	\$1, 000, 000
House allowance	-----	1, 000, 000
Committee recommendation	-----	1, 000, 000

The Committee concurs with the House in recommending \$1 million for salaries and expenses of the President's Advisory Council on Executive Organization. This new Council was established by the President on April 15, 1969.

The Council is (1) undertaking a thorough review of the organization of the executive branch, (2) seeking solutions to organizational problems which arise from among the many departments, agencies, offices, and other separate organizational units in the executive branch, and (3) evaluating the effectiveness of the organizational relationship of the Federal Government to States and cities in carrying out the many domestic programs in which the Federal Government is involved.

Initially, the studies of the Council in this fiscal year were financed by an allocation from the "Emergency fund for the President" of \$500,000. This allocation will be repaid from the amount recommended herein. Thirty permanent positions are funded from this appropriation.

INDEPENDENT AGENCY

THE TAX COURT OF THE UNITED STATES

SALARIES AND EXPENSES

1970 appropriation	-----	\$2, 750, 000
Supplemental budget request	-----	65, 000
House allowance	-----	65, 000
Committee recommendation	-----	65, 000

The committee concurs with the House in recommending the budget estimate of \$65,000, for salaries and expenses of the Tax Court of the United States.

The amount recommended is required to pay the salaries of a newly appointed judge and his staff for 9 months of the current year. The new judge entered on duty October 1969, thus providing the court with its full complement of 16 judges.

CHAPTER VIII

CLAIMS AND JUDGMENTS

The budget estimate to the House for claims and judgments, contained in House Document 91-199, was in the amount of \$15,323,261. The House of Representatives recommended an appropriation of \$24,491,433, an increase of \$9,168,172 over the budget submission to the House. Subsequent to the passage of the bill in the House, an addi-

tional claims and judgments document was submitted to the Senate in Senate Document 91-48 in the amount of \$9,698,591. This later submission to the Senate contained the \$9,168,172 included in the bill on the House floor, which is an Indian Claims Commission award to the Delaware Tribe of Indians of Oklahoma.

The committee recommends, therefore, the total requested in both documents, \$25,021,852, which is an increase of \$530,419 over the House bill.

CHAPTER IX

GENERAL PROVISIONS

SECTION 901—INCREASED TRAVEL RATES

Section 901 was included in the bill by the House Committee on Appropriations and has been approved by the Senate committee. This provision is intended to increase the amounts of various limitations on expenses of travel, or on other purposes involving travel, to the extent necessary to provide for the increased per diem rates authorized by Public Law 91-114. This provision, submitted by the Bureau of the Budget and included in the House bill, increases the limitations in all of the appropriation acts which have been approved this year.

SECTION 903—VALIDATING CLAUSE

The following provision has been included in the bill by the committee:

SEC. 903. The appropriations, authorizations, and authority with respect thereto in this Act, the Department of Defense Appropriation Act, 1970, the District of Columbia Appropriation Act, 1970, the Foreign Assistance and Related Agencies Appropriation Act, 1970, the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1970, the Military Construction Appropriation Act, 1970, and the Department of Transportation Appropriation Act, 1970, shall be available from the sine die adjournment of the first session of the Ninety-first Congress for the purposes provided in such appropriations, authorizations, and authority. All obligations incurred during the period between the sine die adjournment of the first session of the Ninety-first Congress and the dates of enactment of such Acts in anticipation of such appropriations, authorizations, and authority are hereby ratified and confirmed if in accordance with the terms of such Acts or the terms of Public Law 91-33, Ninety-first Congress, as amended.

This is the customary clause usually included in the last supplemental appropriation bill to validate obligations incurred during the period after the sine die adjournment of the Congress and the date the bills are signed by the President.

SECTION 904—THE "PHILADELPHIA PLAN"

The following new language has been included as section 904 of the bill:

SEC. 904. In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute.

The provision recommended by the committee is to reaffirm the authority of the Comptroller General delegated to him by the Congress when it enacted the Budgeting and Accounting Act of 1921, as amended. Section 304 of this act, 31 U.S.C. 74 provides that "Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government." Section 111 of the act, 31 U.S.C. 65 directs the Comptroller General to determine whether "financial transactions have been consummated in accordance with laws, regulations, or other legal requirements." The Comptroller General has exercised the delegated congressional power over the obligation and expenditure of appropriated funds for almost 50 years without serious challenge from the Attorney General of the United States or any other officer of the executive branch. It has been historic that where serious disagreements have arisen with the holdings of the Comptroller General, the proper recourse has been to the Congress or to the Federal courts. The committee holds that this is still true.

The Comptroller General, by letter dated December 2, 1969 informed the committee that a most serious challenge had been posed to his basic authority to determine the legality of obligations and expenditures by the executive branch.

The committee wishes to emphasize that the basic issue here is the constitutional authority of the Congress itself. It must be further emphasized that the Congress has delegated certain of its constitutional authority to the Comptroller General alone. As long as such delegation exists, it must be complete, and not be allowed to be eroded by the executive branch. Therefore the committee strongly recommends the adoption of section 904.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY, ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL

H. Doc. No.	Department or activity	Budget estimate	Recommended in House bill	Amount recommended by Senate committee	Increase (+) or decrease (-), Senate bill compared with—	
					Budget estimate	House bill
	CHAPTER I					
	DEPARTMENT OF AGRICULTURE					
	SOIL CONSERVATION SERVICE					
91-199	Flood prevention.....	\$3,700,000	\$3,700,000	\$3,700,000		
	FARM CREDIT ADMINISTRATION					
91-199	<i>Limitation on administrative expenses</i>	(211,000)	(211,000)	(211,000)		
	Total, chapter I.....	3,700,000	3,700,000	3,700,000		
	CHAPTER II					
	INDEPENDENT OFFICES					
	CIVIL SERVICE COMMISSION					
91-199	Salaries and expenses (<i>by transfer</i>).....	(430,000)	(430,000)	(430,000)		
91-199	Federal Labor Relations Council, salaries and expenses.....	400,000	250,000	400,000		+\$150,000
	COMMISSION ON GOVERNMENT PROCUREMENT					
91-199	Salaries and expenses.....	2,500,000	500,000	2,500,000		+2,000,000
	National Commission on Consumer Finance					
91-199	Salaries and expenses.....	375,000	375,000	375,000		
	COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE					
S. Doc. 91-44	Salaries and expenses.....	1,443,000		1,443,000		+1,443,000
	Total, chapter II.....	4,718,000	1,125,000	4,718,000		+3,593,000

CHAPTER III

DEPARTMENT OF THE INTERIOR

PUBLIC LAND MANAGEMENT

BUREAU OF LAND MANAGEMENT

91-199 Management of lands and resources.....

1, 500, 000

1, 000, 000

1, 500, 000

+500, 000

91-199 Education and welfare services.....

6, 000, 000

6, 000, 000

6, 000, 000

OFFICE OF TERRITORIES

S. Doc.
91-33 Trust Territory of the Pacific Islands.....

1, 380, 000

7, 500, 000

8, 380, 000

+880, 000

MINERAL RESOURCES

GEOLOGICAL SURVEY

91-199 Surveys, investigations, and research.....

700, 000

700, 000

700, 000

FISH AND WILDLIFE, PARKS, AND MARINE RESOURCES

BUREAU OF SPORT FISHERIES AND WILDLIFE

91-199 Management and investigations of resources.....

205, 000

205, 000

414, 000

+200, 000

91-199 Construction.....

2, 500, 000

2, 200, 000

2, 600, 000

+100, 000

Total, Bureau of Sport Fisheries and Wildlife.....

2, 705, 000

2, 405, 000

3, 014, 000

+609, 000

NATIONAL PARK SERVICE

Management and protection.....

220, 000

+220, 000

Maintenance and rehabilitation of physical facilities.....

75, 000

+75, 000

Construction.....

190, 000

+190, 000

Total, National Park Service.....

485, 000

+485, 000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY, ESTIMATES AND AMOUNTS RECOMMENDED
IN THE BILL—Continued

H. Doc. No.	Department or activity	Budget estimate	Recommended in House bill	Amount recommended by Senate committee	Increase (+) or decrease (—), Senate bill compared with—	
					Budget estimate	House bill
	CHAPTER III—Continued RELATED AGENCIES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION					
	Indian health services.....			\$1,000,000	+\$1,000,000	+\$1,000,000
	Construction of Indian health facilities.....			1,952,000	+1,952,000	+1,952,000
	Total, Department of Health, Education, and Welfare.....			2,952,000	+2,952,000	+2,952,000
91-199	NATIONAL COUNCIL ON INDIAN OPPORTUNITY Salaries and expenses.....	\$286,000	\$286,000	286,000		
91-199	SMITHSONIAN INSTITUTION The John F. Kennedy Center for the Performing Arts.....	7,500,000	7,500,000	7,500,000		
	Total, chapter III.....	27,071,000	25,391,000	30,817,000	+3,746,000	+5,426,000
	CHAPTER IV DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE GALLAUDET COLLEGE					
	Salaries and expenses.....		75,000			—75,000
	Construction.....		239,000			—239,000
	(Total, chapter IV).....		314,000			—314,000

CHAPTER IV				
LEGISLATIVE BRANCH				
SENATE				
Salaries, Officers and Employees				
Office of the Vice President.....				+24, 966
HOUSE OF REPRESENTATIVES				
Gratuity to heirs of deceased Member.....		42, 500		+42, 500
Total, chapter IV.....		42, 500		+67, 466
CHAPTER V				
DEPARTMENT OF STATE				
INTERNATIONAL ORGANIZATIONS AND CONFERENCES				
international conferences and contingencies (<i>by transfer</i>).....	(400, 000)	(350, 000)		(-50, 000)
DEPARTMENT OF JUSTICE				
IMMIGRATION AND NATURALIZATION SERVICE				
Salaries and expenses.....	869, 000	869, 000		
BUREAU OF NARCOTICS AND DANGEROUS DRUGS				
Salaries and expenses.....	700, 000	700, 000		
Total, Department of Justice.....	1, 569, 000	1, 569, 000		
DEPARTMENT OF COMMERCE				
ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION				
Salaries and expenses.....	1, 492, 000	418, 000		-874, 000
Research and development.....	330, 000			-330, 000
Facilities, equipment, and construction.....	2, 982, 000	440, 000		+3, 142, 000
Total, Environmental Science Services Administration.....	4, 804, 000	858, 000		+3, 342, 000
OFFICE OF STATE TECHNICAL SERVICES				
Salaries and expenses.....	5, 000, 000			+5, 000, 000

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COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY, ESTIMATES AND AMOUNTS RECOMMENDED
IN THE BILL—Continued

H. Doc. No.	Department or activity	Budget estimate	Recommended in House bill	Amount recommended by Senate committee	Increase (+) or decrease (—), Senate bill compared with—	
					Budget estimate	House bill
CHAPTER V—Continued						
DEPARTMENT OF COMMERCE—Continued						
RELATED AGENCIES						
91-199	Disaster loan fund.....	\$225,000,000	\$175,000,000	\$175,000,000	—\$50,000,000	-----
	UNITED STATES SECTION OF THE UNITED STATES-MEXICO COMMISSION FOR BORDER DEVELOPMENT AND FRIENDSHIP					
	Salaries and expenses.....	159,000	-----	159,000	-----	+\$159,000
S. Doc. 91-47	Total, chapter V.....	236,532,000	177,427,000	185,928,000	—50,604,000	+8,501,000
	CHAPTER VI					
	DEPARTMENT OF TRANSPORTATION					
-199	UNITED STATES COAST GUARD					
	Operating expenses.....			1,200,000	+1,200,000	+1,200,000
	Acquisition, construction, and improvements.....	1,500,000	1,200,000	1,200,000	—300,000	-----
	Total, chapter VI.....	1,500,000	1,200,000	2,400,000	+900,000	+1,200,000
	CHAPTER VII					
91-199	TREASURY DEPARTMENT					
	OFFICE OF THE SECRETARY					
	Salaries and expenses.....	620,000	600,000	600,000	—20,000	-----
91-199	BUREAU OF CUSTOMS					
	Salaries and expenses.....	9,500,000	8,750,000	8,750,000	—750,000	-----

S. Doc. 91-46	UNITED STATES SECRET SERVICE					
	Salaries and expenses.....	4,750,000	-----	-----	-----	+4,250,000
	Total, Treasury Department.....	14,870,000	9,350,000	13,600,000	-1,270,000	+4,250,000
	EXECUTIVE OFFICE OF THE PRESIDENT					
	OFFICE OF INTERGOVERNMENTAL RELATIONS					
91-199	Salaries and expenses.....	120,000	120,000	120,000	-----	-----
	PRESIDENT'S ADVISORY COUNCIL ON EXECUTIVE ORGANIZATION					
91-199	Salaries and expenses.....	1,000,000	1,000,000	1,000,000	-----	-----
	Total, Executive Office of the President.....	1,120,000	1,120,000	1,120,000	-----	-----
	INDEPENDENT AGENCY					
	TAX COURT OF THE UNITED STATES					
91-199	Salaries and expenses.....	65,000	65,000	65,000	-----	-----
	Total, chapter VII.....	16,055,000	10,535,000	14,785,000	-1,270,000	+4,250,000
	CHAPTER VIII					
	CLAIMS AND JUDGMENTS					
91-199	Claims and judgments.....	25,021,852	24,491,433	25,021,852	-----	+530,419
	Grand total:					
S. Doc. 91-48	New budget (obligational authority).....	314,597,852	244,225,933	267,437,318	-47,160,534	+23,211,385
	Limitation on administrative expenses.....	(211,000)	(211,000)	(211,000)	-----	-----
	By transfer.....	(850,000)	(780,000)	(780,000)	(-50,000)	-----

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DIGEST of Congressional Proceedings.

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of December 18, 1969
91st-1st No. 211

CONTENTS

Appropriations.....2,8	Freight cars.....14	Salaries.....7
Civil service.....4	Health.....5	Supergrades.....9
Credit.....3,8	Horses.....1	Supplemental appropriations
Farm program.....12	Housing.....3,82
Farmworkers.....5	Mexican-Americans.....6	Taxation.....13
Federal aid.....13	Construction.....8	Water.....11
Foreign affairs.....6	Personnel.....4,7	Wildlife.....15
Foreign aid.....2,8	Property.....13	
Foreign trade.....10	Recreation.....11	

HIGHLIGHTS: House committee reported supergrade bill. Senate passed supplemental appropriations bill. Senate committee reported migrant workers health bill. Senate passed foreign aid appropriations bill.

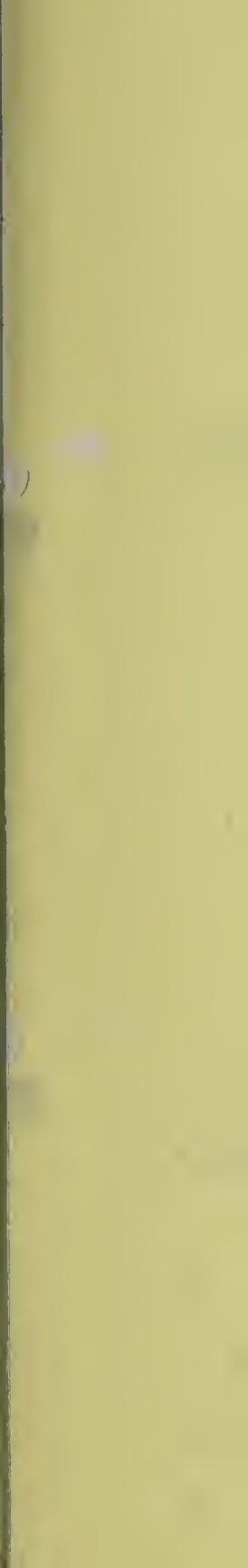
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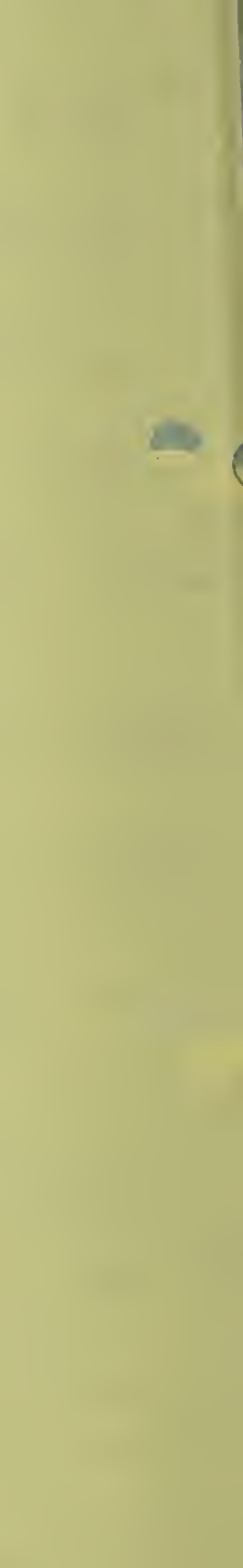
SENATE

1. SORED WALKING HORSES. Passed with committee amendments S. 2543, the bill to prohibit the movement in interstate and foreign commerce of sores Tennessee walking horses. pp. S17077-81
2. APPROPRIATIONS. Passed H. R. 15149, the foreign aid bill by 55 yeas to 35 nays, adopting all committee amendments, and the McGee amendment reducing by \$25 million the funds for military assistance. pp. S17083-88, 17096-107, 17109, 17112-23
Passed H. R. 15209, the supplemental appropriations bill for fiscal year 1970, after adopting all committee amendments, by 74 to 0. pp. S17124-65, 17186-221
Both Houses agreed to the conference report on H. R. 15090, the Defense appropriations bill for fiscal 1970 (pp. H12706-8, S17181-6). This bill will now be sent to the President.
3. MORTGAGE CREDIT. Conferees were appointed on S. 2577, to provide additional mortgage credit. pp. S17107-09
4. CIVIL SERVICE. Agreed to House amendment to H. R. 9233, to promote the efficient and effective use of the revolving fund of the Civil Service Commission. This bill will now be sent to the President. p. S17161
5. MIGRANT WORKER. Sen. Yarborough reported S. 2660, to extend the Migrant Health Act for three years, from Committee on Labor and Public Welfare (S. Rept. 91-618) p. S1722
6. MEXICAN-AMERICAN AFFAIRS. Concurred in House amendments to S. 740, to establish the Inter-Agency Committee on Mexican-American Affairs; this bill will now be sent to the President. pp. S17127-28
7. FEDERAL EMPLOYEES' PAY. Conferees were appointed on H. R. 13000, the proposed Federal Salary Comparability Act of 1969. p. S17147

HOUSE

8. APPROPRIATIONS. Conferees were appointed on H. R. 14794, making appropriations for the Department of Transportation and related agencies, 1970 (p. H12689); and received the conference report (H. Rept. 91-771) (pp. H12782-3).
Conferees were appointed on H. R. 13111, making appropriations for Labor, HEW, and related agencies, 1970. Senate conferees have been appointed. pp. H12689-90, H12720-24
Received the conference report on S. 2577, to provide additional mortgage credit (H. Rept. 91-769). pp. H12783-6
Conferees were appointed on H. R. 15149, foreign assistance and related programs appropriations, 1970. p. H12736
Received the conference report on H. R. 14751, making appropriations for military construction for the Department of Defense for fiscal year 1970. pp. H12780-2





91ST CONGRESS
1ST SESSION

H. R. 15209

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 1969

Ordered to be printed with the amendments of the Senate numbered

AN ACT

Making supplemental appropriations for the fiscal year ending
June 30, 1970, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the following sums are appropriated out of any money
4 in the Treasury not otherwise appropriated, to supply
5 supplemental appropriations (this Act may be cited as the
6 “Supplemental Appropriation Act, 1970”) for the fiscal
7 year ending June 30, 1970, and for other purposes, namely:

1

CHAPTER I

2

DEPARTMENT OF AGRICULTURE

3

SOIL CONSERVATION SERVICE

4

FLOOD PREVENTION

5

For an additional amount for "Flood prevention", for
emergency measures for runoff retardation and soil erosion
prevention, as provided by section 216 of the Flood Control
Act of 1950 (33 U.S.C. 701b-1), \$3,700,000, to remain
available until expended.

10

RELATED AGENCY

11

FARM CREDIT ADMINISTRATION

12

LIMITATION ON ADMINISTRATIVE EXPENSES

13

In addition to the amount made available under this
heading for administrative expenses during the current fiscal
year, \$211,000 shall be available from assessments for such
expenses, including the hire of one passenger motor vehicle.

17

CHAPTER II

18

INDEPENDENT OFFICES

19

CIVIL SERVICE COMMISSION

20

SALARIES AND EXPENSES

21

For an additional amount for "Salaries and expenses",
\$430,000, for necessary expenses of the retirement and in-
surance programs, to be transferred from the trust funds
"Civil Service retirement and disability fund", "Employees

life insurance fund", "Employees health benefits fund", and
 "Retired employees health benefits fund", in such amounts
 as may be determined by the Civil Service Commission.

FEDERAL LABOR RELATIONS COUNCIL

SALARIES AND EXPENSES

For expenses necessary to carry out functions of the Civil
 Service Commission under Executive Order No. 11491 of
 October 29, 1969, ~~(1)\$250,000~~ \$400,000: *Provided*, That
 public members of the Federal Service Impasses Panel may
 be paid travel expenses, including per diem in lieu of sub-
 sistence, as authorized by law (5 U.S.C. 5703) for persons
 employed intermittently in the Government service, and
 compensation at the rate of not to exceed ~~(2)\$400~~ \$150 per
 day when engaged in the performance of the Panel's duties.

COMMISSION ON GOVERNMENT PROCUREMENT

SALARIES AND EXPENSES

For necessary expenses of the Commission on Govern-
 ment Procurement, ~~(3)\$500,000~~ \$2,500,000~~(4)~~, *to remain*
available until June 30, 1972.

NATIONAL COMMISSION ON CONSUMER FINANCE

SALARIES AND EXPENSES

For expenses necessary to carry out the provisions a
 Title IV of the Act of May 29, 1968 (Public Law 90-321)
 \$375,000.

(5) TEMPORARY-STUDY COMMISSIONS

COMMISSION ON POPULATION GROWTH AND THE

AMERICAN FUTURE

SALARIES AND EXPENSES

For expenses necessary for the Commission on Population Growth and the American Future, including services as authorized by 5 U.S.C. 3109, and hire of passenger motor vehicles, \$1,443,000, to remain available until expended: Provided, That this paragraph shall be effective only upon the enactment into law of S. 2701, 91st Congress, or similar legislation.

CHAPTER III

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For an additional amount for "Management of lands and resources", (6)\$1,000,000 \$1,500,000.

BUREAU OF INDIAN AFFAIRS

EDUCATION AND WELFARE SERVICES

For an additional amount for "Education and welfare services", \$6,000,000.

OFFICE OF TERRITORIES

TRUST TERRITORY OF THE PACIFIC ISLANDS

For an additional amount for "Trust Territory of the Pacific Islands". (7)\$7,500,000 \$8,380,000, to remain available until expended.

1 GEOLOGICAL SURVEY

2 SURVEYS, INVESTIGATIONS, AND RESEARCH

3 For an additional amount for "Surveys, investigations,
4 and research", \$700,000.

5 (8) BUREAU OF MINES

6 *For expenses necessary to improve health and safety*
7 *in the Nation's coal mines, \$15,000,000.*

8 BUREAU OF SPORT FISHERIES AND WILDLIFE

9 MANAGEMENT AND INVESTIGATIONS OF RESOURCES

10 For an additional amount for "Management and investi-
11 gations of resources", (9) ~~\$205,000~~ \$414,000.

12 CONSTRUCTION

13 For an additional amount for "Construction", (10) ~~\$2,-~~
14 ~~200,000~~ \$2,600,000, to remain available until expended.

15 (11) NATIONAL PARK SERVICE

16 (12) MANAGEMENT AND PROTECTION

17 *For an additional amount for "Management and Pro-*
18 *tection", \$220,000.*

19 (13) MAINTENANCE AND REHABILITATION OF PHYSICAL

20 FACILITIES

21 *For an additional amount for "Maintenance and Re-*
22 *habilitation of Physical Facilities", \$75,000, for reconstruc-*
23 *tion of certain streets in Harpers Ferry, West Virginia.*

24 (14) CONSTRUCTION

25 *For an additional amount for "Construction", \$190,000,*
26 *to remain available until expended.*

1 RELATED AGENCIES

2 (15) DEPARTMENT OF HEALTH, EDUCATION,

3 AND WELFARE

4 HEALTH SERVICES AND MENTAL HEALTH

5 ADMINISTRATION

6 (16) INDIAN HEALTH SERVICES

7 *For an additional amount for "Indian Health Services",*8 *\$3,000,000.*

9 (17) CONSTRUCTION OF INDIAN HEALTH FACILITIES

10 *For an additional amount for "Indian Health Facili-*11 *ties", \$1,952,000, to remain available until expended.*

12 NATIONAL COUNCIL ON INDIAN OPPORTUNITY

13 SALARIES AND EXPENSES

14 *For expenses necessary for the National Council on*15 *Indian Opportunity, including services as authorized by 5*16 *U.S.C. 3109, \$286,000.*

17 SMITHSONIAN INSTITUTION

18 THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

19 *For additional expenses, not otherwise provided, neces-*20 *sary to enable the Board of Trustees of the John F. Ken-*21 *neddy Center for the Performing Arts to carry out the pur-*22 *poses of the Act of September 2, 1958 (72 Stat. 1698), as*23 *amended, including construction, to remain available until*24 *expended, such amounts which in the aggregate will equal*

1 gifts, bequests, and devises of money, securities and other
 2 property received by the Board for the benefit of the John F.
 3 Kennedy Center for the Performing Arts under such Act,
 4 not to exceed \$7,500,000.

5 **(18)CHAPTER IV**

6 *DEPARTMENT OF LABOR*

7 *WAGE AND LABOR STANDARDS ADMINISTRATION*

8 *For expenses necessary to implement the Federal Con-*
 9 *struction Safety Act of 1969 (Public Law 91-54),*
 10 *\$2,000,000.*

11 **(19)DEPARTMENT OF HEALTH, EDUCATION,**
 12 **AND WELFARE**

13 *For expenses necessary to improve health and safety in*
 14 *the Nation's coal mines, \$10,000,000.*

15 **(20)CHAPTER IV**

16 ~~DEPARTMENT OF HEALTH, EDUCATION, AND~~
 17 ~~WELFARE~~

18 ~~GALLAUDET COLLEGE~~

19 ~~SALARIES AND EXPENSES~~

20 ~~For an additional amount for "Gallaudet College, Sala-~~
 21 ~~ries and expenses", \$75,000.~~

22 ~~CONSTRUCTION~~

23 ~~For an additional amount for "Gallaudet College, Con-~~
 24 ~~struction", \$239,000.~~

1

CHAPTER V

2

LEGISLATIVE BRANCH

3

(21) SENATE

4

SALARIES, OFFICERS AND EMPLOYEES

5

OFFICE OF THE VICE PRESIDENT

6

For an additional amount for "Office of the Vice President", \$24,966.

8

HOUSE OF REPRESENTATIVES

9

For payment to Justina Ronan, mother, and to Eileen Burke and Betty Dlouhy, sisters, of Daniel J. Ronan, late a Representative from the State of Illinois, \$42,500, one-half to the mother and one-quarter each to the sisters.

13

CHAPTER VI

14

DEPARTMENT OF STATE

15

(22) SALARIES AND EXPENSES

16

For an additional amount for "Salaries and expenses, administration of foreign affairs", \$310,000, to be made available only to the Passport Office, Bureau of Security and Consular Affairs, and any amount allocated to such office under the Department of State Appropriation Act, 1970, shall not be reduced as the result of the appropriation of this additional amount.

1 INTERNATIONAL ORGANIZATIONS AND CONFERENCES

2 INTERNATIONAL CONFERENCES AND CONTINGENCIES

3 For an additional amount for "International conferences
 4 and contingencies", \$350,000, to be derived by transfer from
 5 the appropriation for "Contributions to International Orga-
 6 nizations", fiscal year 1970: *Provided*, That \$150,000 of the
 7 foregoing amount shall be transferred and available only on
 8 enactment into law of S.J. Res. 90, 91st Congress, or
 9 similar legislation.

10 DEPARTMENT OF JUSTICE

11 IMMIGRATION AND NATURALIZATION SERVICE

12 SALARIES AND EXPENSES

13 For an additional amount for "Salaries and expenses,
 14 Immigration and Naturalization Service", \$869,000.

15 BUREAU OF NARCOTICS AND DANGEROUS DRUGS

16 SALARIES AND EXPENSES

17 For an additional amount for "Salaries and expenses,
 18 Bureau of Narcotics and Dangerous Drugs", \$700,000.

19 DEPARTMENT OF COMMERCE

20 ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

21 SALARIES AND EXPENSES

22 For an additional amount for "Salaries and expenses",
 23 (23) ~~\$418,000~~ \$618,000.

1 FACILITIES, EQUIPMENT, AND CONSTRUCTION

2 For an additional amount for "Facilities, equipment,
3 and construction", (24)~~\$440,000~~ \$3,582,000, to remain
4 available until expended.

5 (25)OFFICE OF STATE TECHNICAL SERVICES

6 GRANTS AND EXPENSES

7 For an additional amount for "Grants and expenses",
8 including grants as authorized by the State Technical Services
9 Act of 1965 (79 Stat. 679), as amended (82 Stat. 423),
10 \$5,000,000.

11 (26)MARITIME ADMINISTRATION

12 STATE MARINE SCHOOLS

13 For an additional amount for "State Marine Schools"
14 for the Michigan State Maritime Academy, \$130,000.

15 RELATED AGENCY

16 SMALL BUSINESS ADMINISTRATION

17 DISASTER LOAN FUND

18 For additional capital for the "Disaster loan fund", au-
19 thorized by the Small Business Act, as amended, \$175,000,-
20 000, to remain available without fiscal year limitation.

1 (27) UNITED STATES SECTION OF THE UNITED STATES-
2 MEXICO COMMISSION FOR BORDER DEVELOPMENT
3 AND FRIENDSHIP

4 SALARIES AND EXPENSES

5 For necessary expenses of the United States Section of
6 the United States-Mexico Commission for Border Develop-
7 ment and Friendship, including expenses for liquidating its
8 affairs, \$159,000, to be available from July 1, 1969, and
9 to remain available until January 31, 1970.

10 CHAPTER VII

11 DEPARTMENT OF TRANSPORTATION

12 UNITED STATES COAST GUARD

13 (28) OPERATING EXPENSES

14 For an additional amount for "Operating expenses",
15 \$1,200,000.

16 ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

17 For an additional amount for "Acquisition, construction,
18 and improvements", \$1,200,000, to remain available until
19 expended.

1 CHAPTER VIII
2 TREASURY DEPARTMENT
3 OFFICE OF THE SECRETARY
4 SALARIES AND EXPENSES

5 For an additional amount for "Salaries and expenses",
6 \$600,000.

7 BUREAU OF CUSTOMS
8 SALARIES AND EXPENSES

9 For an additional amount for "Salaries and expenses",
10 including hire of passenger motor vehicles and aircraft; pur-
11 chase of an additional one hundred and forty-eight passenger
12 motor vehicles for police-type use without regard to the gen-
13 eral purchase price limitation for the current fiscal year; and
14 purchase of an additional seven aircraft, \$8,750,000.

15 (29) UNITED STATES SECRET SERVICE
16 SALARIES AND EXPENSES

17 *For an additional amount for "Salaries and Expenses,"*
18 *including purchase of an additional forty-two motor ve-*
19 *hicles for police-type use without regard to the general*
20 *purchase price limitation for the current fiscal year,*
21 *\$4,250,000: Provided, That this paragraph shall be avail-*
22 *able only upon enactment into law of H.R. 14944, 91st*
23 *Congress, or similar legislation.*

1 EXECUTIVE OFFICE OF THE PRESIDENT

2 OFFICE OF INTERGOVERNMENTAL RELATIONS

3 SALARIES AND EXPENSES

4 For expenses necessary for the Office of Intergovern-
5 mental Relations, \$120,000: *Provided*, That this appro-
6 priation shall be available only upon enactment into law
7 of S.J. Res. 117, 91st Congress, or similar legislation.

8 PRESIDENT'S ADVISORY COUNCIL ON EXECUTIVE

9 ORGANIZATION

10 SALARIES AND EXPENSES

11 For necessary expenses of the President's Advisory
12 Council on Executive Organization, including compensation
13 of members of the Council at the rate of \$100 per day
14 when engaged in the performance of the Council's duties,
15 services as authorized by 5 U.S.C. 3109, but at rates for
16 individuals not to exceed \$100 per diem, and employment
17 and compensation of necessary personnel without regard to
18 the civil service and classification laws and the provisions
19 of 5 U.S.C. 5363-5364, \$1,000,000, of which \$500,000
20 shall be for repayment to the appropriation for "Emergency
21 fund for the President", fiscal year 1970.

INDEPENDENT AGENCY

TAX COURT OF THE UNITED STATES

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses",
\$65,000.

CHAPTER IX

CLAIMS AND JUDGMENTS

For payment of claims settled and determined by departments and agencies in accord with law and judgments rendered against the United States by the United States Court of Claims and United States district courts, as set forth (30) in Senate Document Numbered 91-48, and in House Document Numbered 91-199, Ninety-first Congress, (31) ~~\$24,491,433~~ \$25,021,852, together with such amounts as may be necessary to pay interest (as and when specified in such judgments or provided by law) and such additional sums due to increases in rates of exchange as may be necessary to pay claims in foreign currency: *Provided*, That no judgment herein appropriated for shall be paid until it shall become final and conclusive against the United States by failure of the parties to appeal or otherwise: *Provided further*, That unless otherwise specifically required by law or by the judgment, payment of interest wherever appropriated for herein shall not continue for more than thirty days after the date of approval of the Act.

CHAPTER X

GENERAL PROVISIONS

SEC. 1001. During the current fiscal year, restrictions contained within appropriations, or provisions affecting appropriations or other funds, limiting the amounts which may be expended for expenses of travel, or for purposes involving expenses of travel, or amounts which may be transferred between appropriations or authorizations available for or involving expenses of travel, are hereby increased to the extent necessary to meet increased per diem costs authorized by Public Law 91-114, approved November 10, 1969.

SEC. 1002. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

(32) SEC. 1003. *The appropriations, authorizations, and authority with respect thereto in this Act, the Department of Defense Appropriation Act, 1970, the District of Columbia Appropriation Act, 1970, the Foreign Assistance and Related Agencies Appropriation Act, 1970, the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1970, the Military Construction Appropriation Act, 1970, and the Department of Transportation Act, 1970, shall be available from the sine die adjournment of the first session of the Ninety-first Congress for the purposes provided in such appropriations, authorizations, and authority. All*

1 obligations incurred during the period between the sine die
2 adjournment of the first session of the Ninety-first Congress
3 and the dates of enactment of such Acts in anticipation of
4 such appropriations, authorizations, and authority are hereby
5 ratified and confirmed if in accordance with the terms of
6 such Acts or the terms of Public Law 91-33, Ninety-first
7 Congress, as amended, except that subsection (c) of section
8 102 of Public Law 91-117, as amended, is hereby repealed,
9 and in lieu thereof the following is inserted: "(c) January
10 30, 1970, whichever first occurs."

11 ~~(33)~~SEC. 1004. In view of and in confirmation of the au-
12 thority invested in the Comptroller General of the United
13 States by the Budget and Accounting Act of 1921, as amended,
14 no part of the funds appropriated or otherwise made available
15 by this or any other Act shall be available to finance, either
16 directly or through any Federal aid or grant, any contract
17 or agreement which the Comptroller General of the United
18 States holds to be in contravention of any Federal statute:
19 Provided, That this section shall not be construed as affecting

1 *or limiting in any way the jurisdiction or the scope of judicial*
2 *review of any Federal court in connection with the Budget*
3 *and Accounting Act of 1921, as amended, or any other Fed-*
4 *eral law.*

Passed the House of Representatives December 11,
1969.

Attest:

W. PAT JENNINGS,

Clerk.

Passed the Senate with amendments December 18
(legislative day, December 16), 1969.

Attest:

FRANCIS R. VALEO,

Secretary.

91ST CONGRESS
1ST SESSION

H. R. 15209

AN ACT

Making supplemental appropriations for the
fiscal year ending June 30, 1970, and for
other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 1969

Ordered to be printed with the amendments of the
Senate numbered

sources, making it essential to create the necessary desalting plants. Israel is plagued with an especially acute problem. Within the next decade—the 1970's—all of Israel's sources of natural water will be effete. Already 95 percent of Israel's water resources have been exhausted. We simply cannot allow ourselves to postpone some form of preventive action, only to awake some morning and realize that there is no available water supply and that we have not taken the precaution of creating pure water from the massive sources of salt water.

The project which we construct in Israel is only a small example of what will be required throughout the world, if it is to remain a habitable place for its hundreds of millions of people. It also is only a projection of what we shall have to begin doing here in the United States. Although our population might not be rising at so rapid a rate as the populations of many other countries, our need for fresh water is soaring. Our rising standard of living, continuing industrialization, and new agricultural methods which demand intensive irrigation make it essential that more and more fresh water sources are available. For example, the United States uses approximately 360 billion gallons of water a day—this is a rate which increases by 25,000 gallons per minute, and which, in 20 years, is expected to triple. If we are to confront this worldwide problem and make some reasoned approach to solving it, we must now acknowledge that desalinization, from all indications, presents the greatest promise for ending the threat of water shortages. Consider simply the fact that almost 75 percent of the earth's surface is covered with water, but this water, since it contains about 3½ percent salt, cannot be used in the same way that natural water is used. If we, therefore, can reduce the salt content of the world's ocean waters, we shall have opened vast new reservoirs of usable water. For years, this was the logical solution. Only recently, however, have we developed the technical expertise to make lowering the salt content of ocean waters feasible. Now this knowledge must be fully exploited. My amendment would hopefully be a pattern for a massive followup program of desalting plants throughout the world. Already 20 countries have such plants, but clearly many more will be needed.

This seems to me to be the ideal time finally to begin shifting the focus of our foreign assistance program. For many many years I have encouraged the Senate to reconsider the military orientation of our foreign assistance program. In a world so plagued by violent hostilities which consume human and material resources at a pathetically disproportionate rate, to all humanitarian efforts, how can we ever hope to make America a nation that is truly seeking peace? How can America be a symbol of all that is good and gentle in a country, unless we stop concentrating 80 percent of our foreign assistance on military expenditures? Now we have the opportunity to use our foreign aid funds in a manner which will further not only the economic development of a country, but also the hope for

peace, and the spirit of peace. When one places his major emphasis on a program which has social and economic benefits, and which is out of the realm of the military, then the old theory about a "self-fulfilling prophecy" can take hold. That is, since our major concern focuses upon nonviolent programs instead of, for example, providing arms or military training to a foreign government, perhaps we can, therefore, lessen the tendency of one state to carry out violent actions against another state.

Although the scope of this one desalting project in Israel is relatively small when views against our entire foreign assistance appropriations, the essential point is that it offers an example of the kind of actions we can be taking to prevent a worldwide tragedy—such as a great water shortage—and at the same time to encourage socially oriented and peaceful foreign assistance projects.

Mr. McGEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. McGEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SARBIE in the chair). Without objection, it is so ordered.

Mr. McGEE. Mr. President, I understand that the yeas and nays have been ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered.

The bill having been read the third time, the question is, Shall it pass?

The clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Georgia (Mr. RUSSELL), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

If present and voting, the Senator from Kentucky (Mr. COOPER), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 55, nays 35, as follows:

[No. 258 Leg.]

YEAS—55

Aiken	Dodd	Holland
Allott	Dominick	Hughes
Baker	Eagleton	Jackson
Bayh	Fong	Javits
Bellmon	Goodell	Kennedy
Bennett	Gore	Mathias
Boggs	Gravel	McGee
Brooke	Griffin	McIntyre
Cannon	Hansen	Metcalfe
Care	Harris	Miller
Cotton	Hart	Mondale
Cranston	Hatfield	Moss

Muskie
Nelson
Packwood
Pastore
Pearson
Pell
Prouty

Proxmire
Randolph
Ribicoff
Saxbe
Schweiker
Scott
Smith, III.

Sparkman
Spong
Williams, N.J.
Yarborough
Young, N. Dak.

NAYS—35

Allen
Bible
Burdick
Byrd, Va.
Byrd, W. Va.
Church
Cook
Curtis
Dole
Eastland
Ellender
Ervin

Fannin
Fulbright
Goldwater
Gurney
Hartke
Hruska
Jordan, N.C.
Jordan, Idaho
Long
Magnuson
Mansfield
McClellan

McGovern
Montoya
Murphy
Smith, Maine
Stennis
Stevens
Talmadge
Thurmond
Tydings
Williams, Del.
Young, Ohio

NOT VOTING—10

Anderson
Cooper
Hollings
Inouye

McCarthy
Mundt
Percy
Russell

Symington
Tower

So the bill (H.R. 15149) was passed.
Mr. McGEE. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. HOLLAND. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

Mr. McGEE. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The PRESIDING OFFICER. Without objection, the motion is agreed to and the Chair appoints Mr. McGEE, Mr. ELLENDER, Mr. MCCLELLAN, Mr. HOLLAND, Mr. MONTOYA, Mr. FONG, Mr. COTTON, Mr. PEARSON, and Mr. YOUNG of North Dakota conferees on the part of the Senate.

Mr. MANSFIELD. Mr. President, with his handling of this appropriations measure for our foreign assistance programs, the distinguished senior Senator from Wyoming (Mr. McGEE) has added another outstanding achievement to his already abundant record. It is difficult enough to take charge of a vast funding proposal. The task is made even more difficult when such a measure concerns an area that increasingly has come under attack over the years. Nevertheless, Senator McGEE handled the job with the same high degree of skill and ability, that has marked his years of public service with the greatest distinction. The Senate is deeply grateful.

The South is grateful as well for the splendid cooperation and support of the distinguished Senator from Hawaii (Mr. FONG). As the ranking minority member of this Appropriations Subcommittee he joined to assure the swift and efficient disposition of the matter.

Also to be commended for their contributions on this proposal were the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Vermont (Mr. AIKEN), the Senator from Idaho (Mr. CHURCH), and the many others who joined the discussion. Their cooperation and the co-operation of the entire Senate assured the prompt consideration of this matter with full regard for the views of every Member.

CHANGING THE LIMITATION ON THE NUMBER OF APPRENTICES AUTHORIZED TO BE EMPLOYEES OF THE GOVERNMENT PRINTING OFFICE

Mr. JORDAN of North Carolina. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9366.

The PRESIDING OFFICER laid before the Senate H.R. 9366, to change the limitation on the number of apprentices authorized to be employees of the Government Printing Office, and for other purposes, which was read twice by its title.

Mr. JORDAN of North Carolina. Mr. President, I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The bill was ordered to a third reading, was read the third time, and passed.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. YARBOROUGH, from the Committee on Labor and Public Welfare:

Frank Charles Carlucci III, of Pennsylvania, to be an Assistant Director of the Office of Economic Opportunity, vice Theodore M. Berry;

Wesley L. Hjernevik, of Texas, to be Deputy Director of the Office of Economic Opportunity;

Dr. Jesse Leonard Steinfeld, of California, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service; and

Donald S. Lowitz, of Illinois, to be an Assistant Director of the Office of Economic Opportunity.

By Mr. SPARKMAN, from the Committee on Banking and Currency:

Arthur F. Burns, of New York, to be a member of the Board of Governors of the Federal Reserve System.

By Mr. EASTLAND, from the Committee on the Judiciary:

William J. Schloth, of Georgia, to be U.S. attorney for the middle district of Georgia; and

Gerald J. Gallinghouse, of Louisiana, to be U.S. attorney for the eastern district of Louisiana.

By Mr. BURDICK, from the Committee on the Judiciary:

Barrington D. Parker, of the District of Columbia, to be U.S. district judge for the District of Columbia.

EXECUTIVE SESSION

Mr. MANSFIELD. I ask unanimous consent that the Senate go into executive session to consider nominations which were reported earlier today.

The PRESIDING OFFICER. Without objection, it is so ordered.

OFFICE OF ECONOMIC OPPORTUNITY

The legislative clerk read the nomination of Wesley L. Hjernevik, of Texas, to

be Deputy Director of the Office of Economic Opportunity.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Frank Charles Carlucci III, of Pennsylvania, to be an Assistant Director of the Office of Economic Opportunity, vice Theodore M. Berry.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Donald S. Lowitz, of Illinois, to be an Assistant Director of the Office of Economic Opportunity, vice James D. Templeton, resigned.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

PUBLIC HEALTH SERVICE

The legislative clerk read the nomination of Dr. Jesse Leonard Steinfeld, of California, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM

The legislative clerk read the nomination of Arthur F. Burns, of New York, to be a member of the Board of Governors of the Federal Reserve System for a term of 14 years from February 1, 1970, vice William McChesney Martin, Jr., term expiring.

Mr. JAVITS. Mr. President, today the distinguished counsellor to the President, Arthur F. Burns, appeared before the House Banking and Currency Committee in connection with his nomination as Chairman of the Board of Governors of the Federal Reserve System of the United States.

Mr. President, we are indeed fortunate that this distinguished and balanced economist, whom I have known for more than two decades, will soon move into the crucial position which has been so importantly filled with distinction, by William McChesney Martin since the early 1950's.

Dr. Burns will be picking up the reins at the Fed at a time when there is widespread controversy over the role being played by the Fed. At immediate issue is the unusually tight monetary policy that the Fed has maintained since late spring which has perhaps moved this economy to the brink of serious recession. The time is upon us for a new creative monetary policy which will move our economy back from this brink while at the same time continuing to curb the price inflation which has seriously distorted our economy since the peak of the Vietnam buildup.

Dr. Burns is eminently qualified to walk this dangerous tightrope. His sound and mature judgment, his modern economic ideas, and his widespread experience at the highest levels of our Government, are the qualities this Nation and world will need in the crucial months and years ahead.

Dr. Burns will need and deserve our support in the period ahead.

The PRESIDING OFFICER. The question is, will the Senate advise and consent to the nomination of Arthur F. Burns to be a member of the Board of Governors of the Federal Reserve System.

The nomination was confirmed.

U.S. ATTORNEY

The legislative clerk read the nomination of William J. Schloth, of Georgia, to be U.S. attorney for the middle district of Georgia, for the term of 4 years vice Floyd M. Buford, resigned.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Gerald J. Gallinghouse, of Louisiana, to be U.S. attorney for the eastern district of Louisiana for the term of 4 years, vice Louis C. LaCour.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. DISTRICT JUDGE

The legislative clerk read the nomination of Barrington D. Parker, of the District of Columbia, to be U.S. district judge for the District of Columbia vice Joseph C. McGarraghy, retired.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resumed the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPPLEMENTAL APPROPRIATIONS, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 15209, supplemental appropriations, 1970, which is the last of the appropriation bills to be considered.

The PRESIDING OFFICER. The bill will be stated by title.

The BILL CLERK. H.R. 15209, supplemental appropriations, 1970.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BOYD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. Pres-

ident, I am happy to report to the Senate the supplemental appropriation bill for fiscal year 1970, which is the last appropriation bill to be considered in this session of the Congress.

Relatively speaking, the sums recommended by the committee for appropriation in this bill are not large—\$267,437,318, an increase of \$23,211,385 over the House Bill and \$47,160,534 under the budget estimate.

The budget estimates submitted to the Senate for consideration in connection with this bill total \$314,597,852. The amount recommended by the House of Representatives is \$244,225,933. Subsequent to the passage of the bill by the House, additional supplemental budget estimates were submitted by the executive branch to the Senate in the amount of \$16,050,591, which the House did not consider.

Mr. President, a large portion of the amounts contained in the budget estimates and in the Senate bill relate in one way or another to the effects of Hurricane Camille last August.

For the Small Business Administration, the committee recommends an appropriation of \$175 million, which amount is required to accommodate the existing and anticipated loan demands of victims of natural disasters.

Under the Department of Agriculture, the committee concurs in the House recommendation of \$3.7 million for the Soil Conservation Service. These funds are required for emergency conservation practices resulting from damages caused in 12 counties in Virginia by Hurricane Camille.

For the Federal Labor Relations Council, under the Civil Service Commission, the House recommended an appropriation of \$250,000. The committee has increased this sum to \$400,000, which is the amount of the budget estimate. These funds will finance the staff and services for the Federal Labor Relations Council and the Federal Services Impasses Panel, created by Executive Order No. 11491, dated October 29, 1969. The purpose of this Council is to help establish effective labor-management relations in the Federal service.

For the Commission on Population Growth and the American Future, the committee has recommended the full amount of the budget estimate of \$1,443,000—to finance an inquiry into and to make recommendations about the probable course of population growth in the United States between now and the year 2000.

For the Trust Territory of the Pacific Islands, the committee has provided an appropriation of \$8,380,000 for grants, subsidies, and contributions for health services, education, public affairs, resources and development, and other purposes.

For necessary Federal activities in connection with the proposed trans-Alaska pipeline, the committee has made the following recommendations:

For the Bureau of Land Management, \$1.5 million;

For the Geological Survey, \$700,000; and

For the Bureau of Sport Fisheries and Wildlife, \$205,000.

Several Members of the Senate brought to the attention of the committee important programs which required funding, and the committee has sympathetically considered the following requests: \$309,000 has been included in the bill for the care and preservation and to plan appropriate storage and a display exhibit relating to the steamboat *Bertrand* at the DeSoto National Wildlife Refuge in Nebraska.

The committee also approved a \$220,000 request for the initiation of a bear management program in Yellowstone National Park, and \$75,000 to reconstruct certain streets in Harpers Ferry, W. Va.

The committee has also approved the request of \$190,000 to initiate the restoration of the Frederick Douglass House in Washington, D.C., and has provided an additional \$1 million for increased contract medical care for Indians.

The subcommittee was requested to provide funds for Federal participation in the construction of a new community hospital in Fairbanks, Alaska, and under the head of "Indian Health Facilities" is recommending an appropriation of \$1,952,000.

For the John F. Kennedy Center for the Performing Arts, the committee has concurred in the House action, which will provide \$7.5 million additional funds to match gifts for continuing construction of the Center.

Under Gallaudet College, the House recommended an appropriation of \$314,000 to expand security guard services and to install a new lighting system and provide better fencing. The committee has stricken this entire sum from this bill, inasmuch as an identical amount for this purpose was included in the Departments of Labor and Health, Education, and Welfare appropriation bill for fiscal year 1970, which has just passed the Senate.

For the Immigration and Naturalization Service, the committee concurs in the House recommendation of \$869,000. The committee has also concurred in the allowance of the House of \$700,000 for the Bureau of Narcotics and Dangerous Drugs.

Under the Environmental Science Services Administration, the committee is recommending and appropriation of \$800,000 for the *Nantucket* weather ship, and \$1,200,000 is recommended for this same purpose under the U.S. Coast Guard. This will provide a total of \$2 million for this important weather forecasting facility.

The committee has included in the bill \$4,250,000 for the U.S. Secret Service. These funds are to provide for 624 new positions for the protection of foreign diplomatic missions in the Washington, D.C., area. Of these additional positions, 514 will be police officers and 110 support personnel.

The committee concurs in the action of the House and recommends an appropriation of \$8,750,000 for the Bureau of Customs. These funds will provide the Treasury Law Enforcement Training School with additional instructors, space, and equipment necessary to train new agents and to hire 915 additional person-

nel for a more effective program against the smuggling of drugs, marihuana, and narcotics.

Mr. President, that completes my opening statement on the bill. I wish to express my gratitude to the able senior Senator from Nebraska (Mr. HRUSKA), who so effectively worked on this bill during the subcommittee hearings and conducted several of the hearings in connection therewith, and whose valuable assistance to me is very much appreciated.

I also wish to express gratitude to the other members of the subcommittee on both sides, who have worked so diligently and have been so helpful in bringing this important bill to the floor.

I now yield to my able colleague from across the aisle (Mr. HRUSKA), for his opening statement.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HRUSKA. Mr. President, I thank the Senator from West Virginia for his kind comments and his compliments. I wish to say that, while these hearings have not been long, they were hearings well directed to the topics before us, and further thanks should be extended to the chairman for his clear description of the outline and substance of the provisions of the bill. It will not be my purpose to repeat any of the details thereof.

The hearings and the money allowances in this bill devoted themselves principally and primarily to the disaster of Hurricane Camille, which has already been referred to. The remainder of the items are that type of item which arises between regular bills for appropriations in their respective fields. There were some which could wait until next year's regular bill, or the supplemental bill which will be referred to Congress right after the first of the year, and in those instances they were deferred, to give us an opportunity to have further hearings on them and consider them in more pertinent context.

Some items originally in the estimates have been taken care of already in the regular appropriation bills, notably in the District of Columbia appropriation bill, so that was a factor also.

Aside from that, there are two sections in the bill devoted to other subjects. One is the availability of funds in the interim between the sine die adjournment of Congress and the actual enactment of the bill, and also the last section in the bill, with which we shall perhaps deal in a little greater detail later in the debate.

Again, I express my appreciation for the splendid leadership furnished by the chairman of the subcommittee.

Mr. BYRD of West Virginia. I thank my colleague. I am very grateful for his remarks.

Mr. President, I am about to propound a unanimous-consent request, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, and that the bill as thus amended be considered as original text for the purpose of further amendment, provided that no point of order shall be waived by reason of this agreement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendments agreed to en bloc are as follows:

On page 3, line 8, after "October 29, 1969," strike out "\$250,000" and insert "\$400,000"; and, in line 13, after the word "exceed," strike out "\$100" and insert "\$150".

On page 3, line 18, after the word "Procurement", strike out "\$500,000" and insert "\$2,500,000"; and, in the same line, after the amendment just above stated, insert a comma and "to remain available until June 30, 1972".

At the top of page 4, insert:

"TEMPORARY STUDY COMMISSIONS

"COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

"SALARIES AND EXPENSES

"For expenses necessary for the Commission on Population Growth and the American Future, including services as authorized by 5 U.S.C. 3109, and hire of passenger motor vehicles, \$1,443,000, to remain available until expended: *Provided*, That this paragraph shall be effective only upon the enactment into law of S. 2701, 91st Congress, or similar legislation."

On page 4, line 17, after the word "resources", strike out "\$1,000,000" and insert "\$1,500,000".

On page 5, line 4, after the word "Islands", strike out "\$7,500,000" and insert "\$8,380,000".

On page 5, line 13, after the word "resources", strike out "\$205,000" and insert "\$414,000".

On page 5, line 15, after the word "Construction", strike out "\$2,200,000" and insert "\$2,600,000".

On page 5, after line 16, insert:

"NATIONAL PARK SERVICE

"MANAGEMENT AND PROTECTION

"For an additional amount for 'Management and Protection', \$220,000.

At the top of page 6, insert:

"MAINTENANCE AND REHABILITATION OF PHYSICAL FACILITIES

"For an additional amount for 'Maintenance and Rehabilitation of Physical Facilities', \$75,000, for reconstruction of certain streets in Harpers Ferry, West Virginia."

On page 6, after line 5, insert:

"CONSTRUCTION

"For an additional amount for 'Construction', \$190,000, to remain available until expended."

On page 6, after line 9, insert:

"DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE"

On page 6, after line 11, insert:

"HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

"INDIAN HEALTH SERVICES

"For an additional amount for 'Indian Health Services', \$1,000,000."

On page 6, after line 16, insert:

"CONSTRUCTION OF INDIAN HEALTH FACILITIES
"For an additional amount for 'Indian Health Facilities', \$1,952,000, to remain available until expended."

On page 7, after line 12, strike out:

"CHAPTER IV

DEPARTMENT OF HEALTH EDUCATION, AND WELFARE

"GALLAUDET COLLEGE

"SALARIES AND EXPENSES

"For an additional amount for 'Gallaudet College, Salaries and expenses', \$75,000.

"CONSTRUCTION

"For an additional amount for 'Gallaudet College, Construction', \$239,000."

At the top of page 8, change the chapter number from "V" to "IV".

On page 8, after line 2, insert:

"SENATE

"SALARIES, OFFICERS AND EMPLOYEES OFFICE OF THE VICE PRESIDENT

"For an additional amount for 'Office of the Vice President', \$24,966."

On page 8, line 13, change the chapter number from "VI" to "V".

On page 9, line 14, strike out "\$418,000" and insert "\$618,000".

On page 9, line 17, after the word "construction", strike out "\$440,000 and insert "\$3,582,000".

On page 9, after line 18, insert:

"OFFICE OF STATE TECHNICAL SERVICES

"GRANTS AND EXPENSES

"For an additional amount for 'Grants and expenses', including grants as authorized by the State Technical Services Act of 1965 (79 Stat. 679), as amended (82 Stat. 423), \$5,000,000."

On page 10, after line 8, insert:

"UNITED STATES SECTION OF THE UNITED STATES-MEXICO COMMISSION FOR BORDER DEVELOPMENT AND FRIENDSHIP

"SALARIES AND EXPENSES

"For necessary expenses of the United States Section of the United States-Mexico Commission for Border Development and Friendship, including expenses for liquidating its affairs, \$159,000, to be available from July 1, 1969, and to remain available until January 31, 1970."

On page 10, line 18, change the chapter number from "VII" to "VI".

On page 10, after line 20, insert:

"OPERATING EXPENSES

"For an additional amount for 'Operating expenses', \$1,200,000."

On page 11, line 5, change the chapter number from "VIII" to "VII".

On page 11, after line 18, insert:

"UNITED STATES SECRET SERVICE

"SALARIES AND EXPENSES

"For an additional amount for 'Salaries and Expenses', including purchase of an additional forty-two motor vehicles for police-type use without regard to the general purchase price limitation for the current fiscal year, \$4,250,000: *Provided*, That this paragraph shall be available only upon enactment into law of H.R. 14944, 91st Congress, or similar legislation."

On page 13, line 6, change the chapter number from "IX" to "VIII".

On page 13, at the beginning of line 12, insert "in Senate Document Numbered 91-48, and"; and, in line 13, after "Ninety-first Congress", strike out "\$24,491,433" and insert "\$25,021,852".

At the top of page 14, change the chapter number from "X" to "IX".

On page 14, at the beginning of line 3, change the section number from "1001" to "901".

On page 14, at the beginning of line 12, change the section number of "1002" to "902".

On page 14, after line 14, insert a new section, as follows:

"SEC. 903. The appropriations, authorizations, and authority with respect thereto in

this Act, the Department of Defense Appropriation Act, 1970, the District of Columbia Appropriation Act, 1970, the Foreign Assistance and Related Agencies Appropriation Act, 1970, the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1970, the Military Construction Appropriation Act, 1970, and the Department of Transportation Act, 1970, shall be available from the sine die adjournment of the first session of the Ninety-first Congress for the purposes provided in such appropriations, authorizations, and authority. All obligations incurred during the period between the sine die adjournment of the first session of the Ninety-first Congress and the dates of enactment of such Acts in anticipation of such appropriations, authorizations, and authority are hereby ratified and confirmed if in accordance with the terms of such Acts or the terms of Public Law 91-33, Ninety-first Congress, as amended."

On page 15, after line 7, insert a new section, as follows:

"SEC. 904. In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute."

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. JAVITS. Mr. President, I should like to say to the Senator that I have made a request of him that, since I shall be engaged in a conference on the poverty program next door, I would hope no unanimous consent as to limitation of time will be requested. I am very cognizant of the problems of the Senate, and normally it would be proper to arrive at a time limitation, but interested Senators are so dispersed that it is impossible to consult with all Senators who would wish to be heard upon the question which I shall raise, and I do not even know that I shall necessarily raise the point of order, or whatever other procedure is adopted, but it is just by way of safeguarding the rights of myself and everyone concerned. I know the Senator well, and know he will protect us fully, even though momentarily no one may be on the floor who is directly concerned.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. HRUSKA. Has this to do with the limitation of time?

Mr. JAVITS. Yes, it has to do with the limitation of time only, and also, of course, that we do not have third reading, or past the point where we can pertinently raise the issue.

The issue, as the Senators know—and we might as well set it of record—relates to section 904 of the bill.

Mr. BYRD of West Virginia. Mr. President, I say in response to the able Senator from New York that I shall make no request regarding a limitation of time unless the Senator is on the floor, or until after I have had an opportunity to confer with him.

Mr. JAVITS. I thank the Senator. I assure the Senator there will be no

dilatoriness on the matter. It is just a matter of giving everyone an opportunity, and I am confident it will be done within the day; there is no desire to delay the matter at all.

Mr. BYRD of West Virginia. Of course, if the Senator does make the point of order, I shall raise the question of germaneness.

Mr. JAVITS. I understand that. I have already ascertained the rule, and that it is necessary that Senators make their speeches and state their views before anything is done; therefore, in this particular instance, I did not wish a time limitation.

But I accept the assurance of the Senator that all interested Senators will be apprised, and that assure him the whole thing will not represent any material length of time, because we still must be free to do what we need to do in the interim.

Mr. BYRD of West Virginia. Mr. President, very well. I know that we can depend upon the assurances of the Senator that no great length of time will transpire as a result of the efforts that are being made to get other Senators together and have consultations.

I want to say to the Senator however, that as far as I am concerned, I am ready to vote on the bill. And I do not intend to provoke any long discussions or at least I do not intend to talk at length. I am ready to vote at any time.

If Senators have questions concerning any item in the bill, this would be a good time to ask them. And if Senators have amendments to press on any money item in the bill, this would be a good time to offer them.

Mr. JAVITS. I thank the Senator.

The PRESIDING OFFICER. The bill is open to amendment.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside so that the able Senator from Connecticut may bring up an amendment of the House to a Senate bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

ESTABLISHMENT OF CABINET COMMITTEE ON OPPORTUNITIES FOR SPANISH-SPEAKING PEOPLE

Mr. RIBICOFF. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 740.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 740) to establish the Cabinet Committee on Opportunities for Spanish-Speaking People, and for other purposes which were, on page 3, line 1, strike out "speak-

ing;" and insert "speaking."; on page 3, strike out lines 2 through 6, inclusive, and insert:

(c) The Chairman may invite the participation in the activities of the Committee of any executive department or agency not represented on the Committee, when matters of interest to such executive department or agency are under consideration.

On page 3, line 7, strike out "(c)" and insert "(d)";

On page 3, line 17, strike out "(d)" and insert "(e)."

On page 6, lines 21 and 22, strike out "(including traveltime)"

On page 7, after line 6, insert:

SEC. 9. Subchapter III of chapter 73 of title 5, United States Code, shall apply to the employees of the Committee and the employees of the Advisory Council.

On page 7, line 7, strike out "SEC. 9." and insert "SEC. 10."

On page 7, line 7, after "appropriated" insert "for fiscal years 1970 and 1971".

On page 7, line 9, after "heretofore" insert "and hereafter".

On page 7, line 13, strike out "SEC. 10." and insert "SEC. 11."

On page 7, after line 17, insert:

SEC. 12. This Act shall expire five years after it becomes effective.

Mr. MONTROYA. Mr. President, the bill before us, S. 740, is essentially the same measure which this body passed unanimously on September 25, 1969. S. 740, you will recall, is a bill which I introduced on January 11, to establish the Cabinet Committee on Opportunities for Spanish-Speaking People. I was joined on this measure by 40 of our colleagues as cosponsors.

The purpose of this new Cabinet Committee, which my bill would establish, would be to assure that Federal programs are reaching all Spanish Americans, Mexican Americans, Puerto Rican Americans, Cuban Americans, and all other Spanish-speaking and Spanish-surnamed Americans, to provide the assistance they need; and to seek out new programs that might be necessary to handle programs that are unique to such persons.

Mr. President, I will not repeat here the reasons for the need to establish this Cabinet Committee. These reasons are well known by this body already.

The Committee on Government Operations has held extensive hearings on the problems of the Spanish-speaking American and has found a need for this legislation. As I have stated earlier, S. 740 was approved unanimously by this body this fall.

I am pleased to see that the House has seen fit to take up consideration of this bill and to pass it during this session. The House, however, has made a number of amendment, and it will be up to the Senate to either agree to the amendments or ask for a conference. Mr. President, I urge my colleagues, as principal sponsor of this measure, to accept the amendments made by the House, pass the bill, and send it to the White House for immediate signature.

Mr. President, in order to have the record straight on the amendments proposed by the House, I wish to inform the

Members of this body that the Honorable CHET HOLIFIELD, acting chairman, House Subcommittee on Executive and Legislative Reorganization, which held hearings and recommended the amendments to this bill, consulted with me on these amendments prior to reporting the bill to the full committee. I believe that the amendments which have been proposed are amendments which will improve the bill, and I accepted them all wholeheartedly, with one exception. The one exception, Mr. President, is the amendment approved by the House adding a new section 12 providing that "this Act shall expire five years after the Program becomes effective." Mr. President, I expressed by displeasure to Congressman HOLIFIELD of this 5-year limitation to the existence of the committee because I do not feel that the problems which the committee must address itself to can be solved in 5 years, or even 10 years. The problems confronting Spanish-speaking Americans have been centuries in the making and cannot be solved overnight.

I reluctantly agreed to this latter provision, however, with the understanding that the legislation authorizing the new Cabinet Committee would be reviewed at the end of the 5 years to determine the progress which the Cabinet Committee will have made and that the Cabinet Committee would most definitely be extended at that time. Mr. President, I ask unanimous consent to insert at this point in the RECORD a copy of my letter of December 1, to Congressman HOLIFIELD explaining my views on this particular amendment.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., December 1, 1969.
Hon. CHET HOLIFIELD,
Acting Chairman, House Subcommittee on
Executive and Legislative Reorganization,
Washington, D.C.

DEAR CHET: This is to confirm our telephone conversation of this morning regarding proposed changes by the House Subcommittee on Executive and Legislative Reorganization to S. 740, a bill which I introduced and which has been passed by the Senate to establish the Cabinet Committee on Opportunities for Spanish-Speaking People.

As I understand it, Chet, the House Subcommittee recommended four changes in S. 740 as passed by the Senate when it reported the bill to the full Committee on November 26, 1969, as follows:

(1) Page 3.—strike out lines two through six and add a new subparagraph (c) authorizing the Chairman to invite the participation of other executive departments or agencies;

(2) Page 6.—on lines 21 and 22, strike out the phrase "(including traveltime)";

(3) Page 7.—on line eight, insert "for Fiscal Years 1970 and 1971" at the beginning of the line; and on line nine after the word "Heretofore" and before the word "made", insert the phrase "and hereafter"; and

(4) Page 7.—after line 17, insert a new section, Section 11, to read as follows:

Sec. 11. This Act shall expire five years after it becomes effective.

Chet, as I discussed with you, as author of S. 740, I have no objection to change one, two and three described above if the House Subcommittee feels the amendments are necessary. I do have strong reservation about pro-

posed change number four, above, namely limiting the life of the Committee to only five years.

If a time limit must be placed on the life of the Committee, I would prefer to see a more realistic life span such as 10 years for example. However, in view of the objections which have been raised within the House Subcommittee to establishing the Committee initially beyond a five year time span, and in view of your own strong recommendation that this change be accepted by the Senate in order to have S. 740 passed by the House, I reluctantly agree to accept this provision.

I would like the record to show, however, that by this action, neither I nor the House Committee on Government Operations wish to leave even the slightest impression that the work of the new Cabinet Committee on Opportunities for Spanish-Speaking People can be accomplished in five years, nor that the life of the Cabinet Committee should not be continued beyond that time until the work which it needs to do is completed. When I introduced S. 740, I thought about placing a definite time limit on the existence of the Cabinet Committee. During my testimony on S. 740 before the Senate Government Operations Committee, I made reference to the fact that this new Cabinet Committee should not be in existence forever.

I, too, felt that the Cabinet Committee should be operating within some specific time frame. However, when one contemplates the length of time our Spanish-Speaking citizens have suffered; their distrust of many of our Federal and local government agencies brought about by past insensitivity to their problems; their employment and housing problems; and their inequality in educational opportunities, we realize the enormity and difficulty of the task of the Cabinet Committee and the impossibility of placing a definite time limit on solving these problems.

To meet these problems, the new Cabinet Committee will have to work diligently but with patience. Their work can certainly not be accomplished in five years. I would be the first to wish that it could, for this would mean that in five years the Spanish-Speaking people of this country would no longer be a disadvantaged group.

I believe that by authorizing appropriations for only two years as the House Subcommittee has proposed, that Congress will be assured of at least biannual reviews of the Cabinet Committee's accomplishments. This should ensure against any footdragging on the part of the Cabinet Committee in meeting their responsibilities and should make the need for a definite time limit a less urgent one.

With the above comments in mind, and because of the urgent need to enact this enabling legislation, I will support the changes being proposed by the House Subcommittee. I have also discussed this matter with Senator Abraham Ribicoff's Subcommittee on Executive Reorganization and have received assurances of the Subcommittee's support for these changes. Thus, if the House will approve S. 740 with the above changes, the Senate, I am confident, will accept the amendments without the need for a conference. This should ensure enactment of S. 740 during this Session of Congress.

On another amendment, I have been contacted by representatives of the Inter-Agency Committee on Mexican American Affairs, asking if I would have the House include language in S. 740 authorizing the new Cabinet Committee to accept donations of funds and goods. In checking with the Legislative Reference Service of the Library of Congress, I was informed that Federal agencies need specific legislative authority before being able to accept donations. Safeguards are usually provided to ensure there is no misuse of such donations. Should the House Government

Operations Committee agree to include such an amendment in S. 740, I would have no objection to it, and am confident that Senator Ribicoff would likewise approve it.

Chet, I wish to thank you and the other members of the Subcommittee and the full Committee for your every cooperation on this bill. I realize that you received the bill in your Committee only last week on re-referral from the House Foreign Affairs Committee. You have certainly worked expeditiously and diligently in reporting the measure out. For this, you have my every appreciation. I also wish to thank you for the opportunity to comment on the proposed changes by the House on this bill.

Kind regards.

Sincerely,

JOSEPH M. MONTTOYA,
U.S. Senator.

Mr. MONTTOYA. Mr. President. I mention the above as background because I feel it is imperative that the legislative history of S. 740 clearly indicate that it is not the intent of Congress that the committee should lapse at the end of 5 years. No one wishes any more than I that all the problems confronting Spanish-speaking Americans could be solved in the next 5-year period. If so, there would be no need to continue the Cabinet Committee, and it should lapse. However, the problems are too great and the solutions are not easy. It will take more than 5 years; it may well take more than a decade to resolve these problems. The Cabinet Committee should be held to account at the end of the presently authorized 5-year period to insure that they are effectively serving the purpose for which they were established, and the life of the Cabinet Committee must be extended.

Mr. President, with that, I urge my colleagues to adopt the amendment proposed by the House in order that we may be able to enact this legislation prior to the adjournment of this session of Congress. We have kept this Cabinet Committee in limbo for far too long. We must provide them with their authorization and their directive so that they may go about their work in earnest.

In closing, I wish to again reiterate the thought which I have expressed on so many occasions before that this Cabinet Committee should be the spokesmen for the Spanish-speaking American to the administration and not the spokesmen for the administration—whichever party the administration should represent—to the Spanish-speaking people.

The problems of the Spanish American are not political in nature, and they cannot be solved by playing politics. Instead, the problems can only be prolonged by such tactics. It is my fervent hope that the Cabinet Committee will be about its work in a diligent manner, solving the problems that need to be solved and doing so in a bipartisan basis.

I intend to provide them every measure of assistance I can in the Congress. And I also intend, as principal sponsor of the authorizing legislation, to maintain a continuing surveillance over the activities in order that together, with the assistance of others, we can attain our goal as promptly as possible and better conditions not only for all Spanish-speaking Americans, but for all Americans.

I would also wish to express my gratitude and appreciation to Senator ABRAHAM RIBICOFF, chairman of the Senate Subcommittee on Executive Reorganization of the Government Operations Committee, for his cooperation in scheduling early hearings on this bill and for assisting in its expeditious approval by the Senate. My thanks also go to Congressman CHET HOLIFIELD, who reported the bill out the week following the time it was referred to him and his subcommittee for action. He worked extremely hard to bring this measure before the House in short order. Without the assistance of Senator RIBICOFF and Congressman HOLIFIELD, we would not have the opportunity to vote on this bill today.

Mr. President, I urge the approval of the House amendments to S. 740.

Mr. RIBICOFF. Mr. President, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate resumed the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I just want to make it clear that I am ready to proceed, and that the quorum was not to accommodate me in any way. I just want to make it clear, if there is any misunderstanding.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield to the Senator from New York.

Mr. JAVITS. The Senator is absolutely correct. The quorum was for the purpose of giving notice to Senators who may desire to be heard upon this very important question. I take full responsibility for it.

One other point, Mr. President, on another subject: We had a debate here in respect of the appropriation for HUD, the Housing and Urban Development Administration, on the adequacy of urban renewal funds, and the bill was then under the management of the Senator from Rhode Island (Mr. PASTORE). We very deeply felt that the urban renewal funds provided were inadequate, not only as to the need but also as to the urgent requirement of plans which would be very seriously interfered with. The stock of housing in the country would be materially curtailed if the plans did not proceed.

In view of the very strong opinion of Senator PASTORE and our great confidence in him, those who felt as I did stayed our hand from any effort to in-

crease the amount of the urban renewal funds, with the understanding that when a supplemental came along—the time of the supplemental not being expressly designated—we would have an opportunity to deal with the question again, based upon a specified set of facts as to the exact parameters of the requirement, within the strict limitations as I have stated.

This is the first supplemental that has come along since that time, and we have endeavored, with the Secretary of HUD, to get the kind of figures that could be used as a basic representation to the Senate for the purpose of seeking supplemental appropriation for urban renewal funds. The Secretary advises us that he will be unable to give us the kind of figures he wants to give us in terms of accuracy and predictability, and in terms of the kind of figures we want, until January.

I make this statement only to explain that this is an ongoing matter of action for me and the others interested, and that we will seek the earliest opportunity with relevance to the essential factual data to bring about an adequate appropriation for that purpose.

Mr. BYRD of West Virginia. Does the Senator wish to include in this bill moneys for the item?

Mr. JAVITS. I just explained that I—

Mr. BYRD of West Virginia. I am sorry. I was speaking with another Senator.

Mr. JAVITS. I just explained that we do not have the kind of figures that we promised Senator Pastore, who joined us in the request, we should have. But I did not want to let the first supplemental go by since that debate without accounting for why we were not moving now on this one, and without pointing out that we would move probably early in January or certainly in January, as soon as we had the necessary factual basis; because the kind of definition figures we want are rather strict, and the Secretary wants to be very sure of his ground before giving us the information.

I emphasize that this does not represent any initiatory action by him. It will be our action, but he will give us at our request—joined in by Senator Pastore and other Senators—the basic factual data upon which we may proceed.

Mr. BYRD of West Virginia. Very well. I want the Senator to know that I am sympathetic toward the item; and at such time as he and other Senators have secured the information they are seeking, as chairman of the Subcommittee on Deficiencies and Supplementals, I will be glad to have a hearing and to be as helpful as I can.

Mr. JAVITS. I thank the Senator.

Mr. BYRD of West Virginia. I yield to the Senator from Arkansas.

THE NIGHTMARE OF THE DISTRICT OF COLUMBIA SCHOOLS

Mr. McCLELLAN. Mr. President, on yesterday, when we had under consideration H.R. 13111, making appropriations for the Department of Labor and Health, Education, and Welfare, in opposing an

amendment offered by the distinguished minority leader, the Senator from Pennsylvania, I said, among other things, at page S16957 of the RECORD:

Today it is not a question of improving education. The effort is centered upon integration in education. Look at the schools in Washington, D.C., if we want an example.

As integration of schools was forced, many white people moved away. Dislocations and disruptions occurred. And today we have an intolerable condition in the Nation's Capital, an educational jungle where teachers' lives are not safe, where pupils are not safe, and where lawlessness and violence reign to such an extent that the doors of school buildings today are padlocked for protection and safety of those on the inside.

Mr. President, in today's Washington Daily News there is a front page article by Richard Starnes entitled, "The Nightmare of the District of Columbia Schools." The article conclusively supports and confirms the above statement that I made in my address to the Senate yesterday. It is not just a horrible situation that prevails here in the schools, it is alarming and distressing. This article demonstrates the need for immediate action to provide safety for the school personnel in the District of Columbia.

What I said yesterday about school conditions was no exaggeration. Obviously it was an understatement of the terrible conditions that prevail. They are worse than I stated them to be.

Mr. President, I ask unanimous consent to have printed in the RECORD the article which was published today in the Washington Daily News entitled, "The Nightmare of the District of Columbia Schools."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE NIGHTMARE OF DISTRICT OF COLUMBIA SCHOOLS

(By Richard Starnes)

Enter the dirty, tombstone-colored building and you walk into a nightmare world where an aura of diffuse terror falls into step beside you.

There is a sound in the air that bespeaks Kafka's madhouse, a subdued keening, a wordless language that murmurs violence, despair, savagery and dread. The sound is an overture to hysteria, an obligato written for the destruction of a society.

There are warders wherever you look, but it isn't a prison. There is the unmistakable stink of lunacy on the place, but it is not an asylum. Where you are is a public school. It might be any one of a hundred in Washington (or, perhaps, in any other American ghetto, circa 1969).

It may be unfair to single out one school, for its most awful crime is that it is fairly typical. This one happens to be Shaw Junior High, and it is a monument to an unprecedented epoch of murder, rape, extortion and fear that has all but destroyed the public school system in the nation's capital.

IN RIOT AREA

Shaw sits in the middle of Washington's "charcoal alley"—the central ghetto that was burned and pillaged in the riots of April 1968. Because it is so typical of the disaster that has overtaken the public schools here it is worth a closer look. But it is a look that should be taken within this perspective:

The District of Columbia school system, in the words of its acting superintendent, has been "seriously crippled" by vandalism and thefts, security of children has reached "a

horrible point," classroom intruders have posed a "severe" threat to education.

At Cardozo High School, 13th and Clifton streets nw, two to three purse snatchings occur in the school cafeteria every day, despite the fact that a policeman is on duty during school hours. Last winter at Cardozo an assistant principal was shot and killed by youths who robbed the school bank.

At Hart Junior High, 601 Mississippi-av se, the score since school opened in September is two burglaries, one safe cracking, 20 assaults, an equal number of cases of extortion, more than a score of lockers looted, and an undetermined amount of teaching equipment stolen or vandalized.

An epidemic of robbery, beating and extortion has created a reign of terror for children attending public schools in the area of Bolling Air Force Base and the U.S. Naval Station in southeast Washington. Mrs. Gladys Ford, president of the Military Parents Association, told authorities that career service men were quitting the military rather than expose their children to the jungle atmosphere. "Our children are being robbed and beaten every day," she said.

On the first day of school a Paul Junior High teacher was knocked unconscious. It was the third such episode in less than a year, and teachers threatened a march on the Capitol to demand protection.

In the Anacostia (far southeast) area of the city one girl was put on tranquilizers after young thugs tore off her shirtwaist and bra during a robbery.

Early this week at Anacostia High School (scene of a shootout with .45s last year) a pupil was shot and critically wounded in a washroom.

A class at Monroe Elementary School (725 Columbia road nw) was held at gunpoint just after the start of the current school year and a teacher's purse was looted of the \$2 it contained.

A teacher at McFarland Junior High School (Iowa-av and Webster-st nw) told a Congressional inquiry two months ago that he spent most of his time as a jailer, cop and disciplinarian. Three weeks after school started this fall he was beaten up by five drunken youths who invaded his classroom and began over-turning desks. A policeman advised him to "... get yourself a club" if it happened again.

Since much of the violence comes from dropouts and truants most school officials try to restrict access to the schools to pupils who are actually attending classes. This has led to the chaining and padlocking of all but one or two exits in a number of schools, a clear violation of the law that has alarmed Fire Department officials. Altho fire marshals have made representations to principals of the schools involved the practice has not stopped.

BLACKBOARD JUNGLE

A durable—almost heroic—first witness to this nightmare is Percy Ellis, principal of Shaw Junior High, a Negro who goes everywhere in his seedy old school at a dead run, who takes cheerless pride in telling it like it is, and who might make a fruitful source for some latter-day Gibbon recording the decline and fall of the American civilization. Mr. Ellis has a round, smooth face that mirrors tragedy, elation, moody reflection and ominous forboding with the quick fluency of a performer schooled in Chinese drama.

With the quick hands of a welterweight, Mr. Ellis intercepts a skinny black child who is sidling along a corridor.

"What are you doing with those rubber bands on your wrist?" he demands. "Take them off. Throw them in the waste basket."

With the expertise of an old cop he frisks the child, and then tells him to return to his home room. When the child is gone Mr. Ellis answers a question posed by a visitor naive in the ways of the blackboard jungle.

HALLWALKER

"Why did I take the rubber bands? Because I have two good eyes and I want to keep them. These hallwalkers use rubber bands as slingshots, and their ammunition is staples. He has not had any eyes put out yet, and I'd like to keep it that way."

Another question elicits the information that a "hallwalker" is a youth—truant or dropout—who invades the school but does not attend classes.

In Mr. Ellis's office a tray of untouched lunch, a wilted sandwich and a sagging piece of cherry pie, bears additional witness that the principal of a District of Columbia public school has no more time for lunch than the master of a burning passenger vessel would.

But all this is prologue. The real message of archetypal Shaw is the ominous shadow of the future that it casts.

"Something happened six months ago," Mr. Ellis tells his visitor. "It became different, much more difficult, almost unmanageable." Three veteran women teachers have come to the principal's office now—women like those for whom the word "dedicated" first was coined—and in deference to them Mr. Ellis takes rare recourse to euphemism. "Since school started I've been called s.o.b. and m.f. more times than in all my 21 years in the schools before. They stop you in the halls and want to fight you. And it is going to get worse. Something is happening."

VOLATILE

One of the teachers, bright, articulate and (curiously, like so many others in the front line of Washington's school system) a chain smoker, takes up the dreadful hard kernel of the story.

"There is something unusually volatile about Shaw," she muses. "So often we have been the first wave of whatever is going to happen. Ten years ago it was gangs, and every boy wore the uniform jacket of his gang or club. Then, long before it began to happen elsewhere, the gangs disappeared at Shaw. After that, say two years ago, we began having fires . . ." The sentence hangs unfinished in the air, while everyone in the room is reminded that 20-odd months ago the riot fires consumed a great deal of the ghetto area around Shaw. "And now . . ." Again she lets her listeners complete the sentence themselves.

Now Shaw is a place of aimless violence, where hallwalkers sow terror, where burly assistant principals stand guard at doors and stairways, where little children are drilled in the safest method of reacting to extortion.

EXHAUSTION

Like chain smoking, exhaustion is another hallmark of the people who are trying to keep Washington's public schools from slipping the last inch into the inferno. At 5 p.m. it is dark outside, and the lurking shadows in the hallways contain a malignant promise that is enough to raise the hair on a veteran of Vietnam, Watts and other waystations in our hard hat society. But Percy Ellis is still at it, explaining, preaching, like some despairing ancient mariner unwilling to miss an opportunity to tell a man from the other side what is happening here, where it is at.

"The (Teachers') union is responsible for a lot of this," he says. "This isn't a 9 to 5 job here. It takes dedication. Like those three great ladies who were here earlier. But we aren't getting that kind any more, we're getting a new breed. They won't take hall duty, which is the only thing that keeps us alive here. They won't offer that extra effort that is a minimum requirement here."

"We are trying to hold back disaster, and with them everything is a grievance. Two or three a week. Children in Shaw need self-respect, for example, and we know that a child's opinion of himself, his morale, is conditioned by his appearance. Until two or

three months ago we had a necktie rule here; it was difficult to enforce, yes, but it was a valuable thing. But they made a grievance out of it, and we got orders from the superintendent's office to stop it. Things have gotten worse since."

RACIAL IMBALANCE

Not everyone who was interviewed during a week-long survey of the beleaguered Washington schools agreed that the Washington Teachers Union (WTU) was a major factor in the coming collapse of the system. But most agreed with Mr. Ellis about a number of other elements in the gathering disaster.

From a number of different vantage points, everyone alludes to the fact that integration has been a failure in Washington. The schools here are between 93 and 94 per cent black. Even busing, which is done to a limited extent, cannot redress the imbalance. Some experts (among them the voluble Percy Ellis) vow that no improvement can be expected until whites are somehow encouraged to return to the city. Others insist the problem is not one of race, but of poverty, and point to an unemployment rate among ghetto youths that may be more than 25 per cent. Almost everyone agrees that one cause is a creaking, time-encrusted bureaucracy that is unable to deal with the explosive problems that confront it. While Congress, the city's perennial scapegoat, is not wholly blameless, a good case can be made that the bulk of the blame lies elsewhere.

Sen. William Proxmire, D-Wis., a member of the Appropriations Committee considering the school system's \$185 million annual budget, recently offered figures to show that Washington was "right on top" in per capita expenditure per pupil. At \$982 per year, according to Sen. Proxmire, the nation's capital compares favorably with Cleveland's \$800, Boston's \$885 and Atlanta's \$772.

HISTORY OF NEGLECT

Benjamin J. Henley, the city's acting superintendent of schools (another worn-out chain smoker) is quick to admit the manifest ailments that afflict the schools, and cites "a long history of neglect" to explain them.

"We have urgent needs in employment, housing, education and health," he told a recent visitor to his top floor office in one of Washington's newest high rise buildings. "In the far southeast overcrowding is almost unbelievable. We need staff development—all of us need re-training."

Why the terribly physical toll on school buildings? Why more than \$200,000 worth of broken windows in the schools every year?

"The schools represent the power structure," Mr. Henley replies slowly. "The schools are an agency to which people turned with hope, and it has not done what was hoped for. If we could handle the materials that are needed quickly enough, if we had a mechanism that really made teachers think that their feelings were being taken into account, if we could respond quickly to critical situations, morale could be helped measurably."

IMPROVE READING

Mr. Henley sighs ponderously and lights another cigaret. "If I could have one wish I would have every teacher given the skills needed to improve reading in our schools. We would reduce dropouts. We would convince the community that we are doing what we are supposed to be doing."

In spite of the bubbling of the volcano beneath him, Henley says he is convinced things are getting a little better. "Student unrest is lessening," he insists. "We've been thru two moratoriums this fall with no problems. We have had a championship football game without incident."

Not unexpectedly the Washington Teachers Union takes a somewhat different attitude toward the convulsion that has beset the school system. WTU President William Simons cautiously concedes "Yes, there is a

problem. But nevertheless a learning program is going on for many children. The problem that does exist is a shortage of classroom facilities, too-large classes. The average is 35, it should be 25, and 20 for the very early grades."

(But again Shaw's tough-minded Percy Ellis: "Teacher-student ratios are meaningless. We have 1,300 enrolled in Shaw, and on an average day 20 per cent will be absent. Some classes might show as many as 45 on the books, but you visit the room and you'll find eight or 10 actually attending.")

DISCIPLINE

WTU defends its intervention in the great necktie dispute, calling a dress code "absolutely unnecessary." But it turns out that during contract negotiations for Washington's 8,000 teachers (of whom about half belong to WTU) the union opposed a dress code for teachers. "We could hardly oppose it for teachers and accept it for the children," a union spokesman said.

The next witness, is the Proxmire committee. "Whatever the problems of the District school system," a recent committee paper said, "the committee suggests that they are perhaps not wholly related to the present level of resources being committed to it."

"The children of the District of Columbia are entitled to better educational advantages than they are receiving. The schools have both the personnel and financial means to mold a system of public education second to none."

And at the locked and guarded door of Shaw, a final word from Principal Ellis:

"Discipline has vanished from the homes and from the schools. It is in fact now impossible to fire or transfer a teacher. Nothing can be accomplished without discipline. Above all else we need discipline, discipline, discipline."

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 59) to authorize the Secretary of the Army to adjust the legislative jurisdiction exercised by the United States over lands within the Army National Guard Facility, Ethan Allen, and the U.S. Army Materiel Command Firing Range, Underhill, Vt.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 9634) to amend title 38 of the United States Code in order to improve and make more effective the Veterans' Administration program of sharing specialized medical resources.

The message further announced that the House had agreed to the amendments of the Senate to the bill (H.R. 11959) to amend chapters 31, 34, and 35 of title 38, United States Code, in order to increase the rates of vocational rehabilitation, educational assistance and

special training allowance paid to eligible veterans and persons under such persons under such chapters, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15090) making appropriations for the Department of Defense for the fiscal year ending June 30, 1970, and for other purposes; and that the House receded from its disagreement to the amendments of the Senate numbered 8, 10, 11, 20, 22, 24, 26, 27, 29, 31, 33, 34, 36, 38, 40, 41, 43, and 44 to the bill and concurred therein.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 12535. An act to authorize the Secretary of the Army to release certain restrictions on a tract of land heretofore conveyed to the State of Texas in order that such land may be used for the city of El Paso North-South Freeway; and

H.R. 13716. An act to improve and clarify certain laws affecting the Coast Guard Reserve.

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred, as indicated:

H.R. 12535. An act to authorize the Secretary of the Army to release certain restrictions on a tract of land heretofore conveyed to the State of Texas in order that such land may be used for the city of El Paso North-South Freeway; to the Committee on Armed Services.

H.R. 13716. An act to improve and clarify certain laws affecting the Coast Guard Reserve; to the Committee on Commerce.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. BYRD of West Virginia. Mr. President, I would hope we could get on with our consideration of this bill. We have only Friday and Saturday remaining in this week. This is the last appropriation bill, and once this bill has been acted upon by the Senate all that will remain will be conference reports and noncontroversial measures which may be called up by unanimous consent.

I know all Senators want to get home; some Senators have reservations on planes. We all want to get home to see our families. There is an excellent chance that we can get out of here sine die Saturday night if we pass this bill today. If the bill goes longer than today, then the chance is lessened for our being able to get out of here this week. We will be coming back, I understand, on the 19th of January. Every additional day we can rest in December will give us more opportunity to be with our families and grandchildren and allow our staffs to be with their families, the hap-

pier everyone is going to be at Christmas time, and the more refreshed all of us will be when we come back on January 19.

I am ready to vote on the bill—

Mr. JAVITS. Mr. President, will the Senator from West Virginia yield, because we have a speaker ready.

Mr. BYRD of West Virginia. I yield the floor.

Mr. FONG. Mr. President, the revised Philadelphia plan established by the Department of Labor has provided a significant motivation to employer, union, and minority groups within a number of cities for the voluntary negotiation of an agreement by which minority individuals may be granted significant opportunity for employment within the construction industry. The discussions surrounding the negotiation of such voluntary plans as well as the implementation of those plans have provided a significant channel for civil rights tensions. It is believed that the elimination of the Philadelphia plan would reduce the incentives for such negotiations to the detriment of minority employment opportunity.

The experience in Philadelphia with the revised Philadelphia plan has been excellent. The Department of Health, Education, and Welfare has approved the award of 14 contracts pursuant to the Philadelphia plan and has held a significant number of prebid conferences. No significant contractor or union objection to the Philadelphia plan has been heard in prebid conferences or with respect to the award of any specific contract.

The present controversy between the Department of Labor, supported by the Attorney General, and the Comptroller General does not involve a dispute between Congress and the executive branch. Instead, the apparent controversy revolves around the interpretation of the intent of Congress in its enactment of the Civil Rights Act of 1964. The Comptroller General has interpreted that legislation in one way and the Attorney General in another manner. Thus, the matter involves only an interpretation of the intent of Congress and in no way can be interpreted as a conflict between the executive and congressional branches. Indeed, the Attorney General's opinion follows the wishes of Congress as expressed in the Civil Rights Act of 1964 as he interprets those wishes.

The conflicting interpretations of the Attorney General and the Comptroller General are most properly resolvable in the courts rather than before Congress. There exists a number of avenues for court review, for instance, a grantee of Federal funds may seek a declaratory judgment to determine whether the revised Philadelphia plan is legal. A contractor who does not receive payment because of a disallowance by the Comptroller General may sue the Federal Government in the Court of Claims for payment.

The Comptroller General has stated that the Philadelphia plan is illegal. He may be right. If he is correct, then we should support him. He is our representative—the congressional watchdog.

But there is also the opinion of the

Attorney General and the opinion of the solicitor of the Labor Department and their opinions are contrary to the opinion of the Comptroller General. They may be right also in their interpretation as to what the intent of Congress is.

Thus, here we have a plan which the Comptroller General says is illegal, and the Attorney General and the solicitor of the Labor Department, on the other hand, say it is not illegal.

Mr. PEARSON. Mr. President, will the Senator from Hawaii yield?

Mr. FONG. I yield.

Mr. PEARSON. What mechanism, institution, or implementation of this plan gave rise to the circumstances by which the Comptroller General would issue any opinion as to the legality of the plan?

Mr. FONG. As I understand it, 14 contracts were let, pursuant to the Philadelphia plan, by the Department of Labor. The goal, as they say, is to reach a certain number of minority employees who would be employed, and the Comptroller stated that the plan was illegal.

Mr. PEARSON. Well, who requested the opinion of the Comptroller? I do not think he makes it a practice of issuing opinions.

Mr. FONG. That, I am not aware of.

The Senator from North Carolina (Mr. ERVIN) had a hearing on this matter. Probably he could inform the Senator as to how this matter came before the Comptroller General.

Mr. PEARSON. Actually, I am very much interested in what the Senator from Hawaii said, that there is really no conflict between Congress and the executive branch, since the Comptroller General and many Senators feel that it is.

I was concerned and interested to know by what means, at whose request, or under what circumstances, the legal department, the arm of Congress, issued an opinion.

Mr. FONG. I cannot answer that question.

Mr. PEARSON. What were the circumstances by which the Attorney General was called to issue his opinion?

Mr. ERVIN. Mr. President, complaints were made to the Comptroller General by the Association of General Contractors of America. Complaints were made by the General Building Contractors Association, Inc., of Philadelphia, Pa. Complaints were made by the Guild of Construction Trades, AFL-CIO.

Mr. PEARSON. May I inquire of the Senator from North Carolina by what procedures were these complaints filed with the Comptroller General and why were they filed with his office?

Mr. ERVIN. Because the United States Code, section 65 of title 31, places under the control of the Comptroller General the duty of seeing that all financial transactions of the Federal Government are consummated in accordance with laws, regulations, or other legal requirements. And also because section 64, title 31 of the United States Code provides that all balances of contracts shall be certified by the GAO from the settlement of all public accounts and provides that the certification of the GAO shall be final and conclusive upon the executive branch of the Government, and the Comptroller

General did not want people to be entering into contracts which he considered to be illegal and put in a position where he would have to deny payments of public accounts.

Mr. PEARSON. To whom did the Comptroller General issue an opinion, to the Congress or those who filed the complaints?

Mr. ERVIN. He advised the Secretary of Labor about it. He sent a long letter, giving his opinion, to the Secretary of Labor, simply because he conceived that it was his public duty to see that no contracts were made by the Department of Labor or with the Department of Labor which violated an act of Congress.

Mr. PEARSON. May I assume, if the Senator will yield further, that the Secretary of Labor then asked the Attorney General of the United States to grant him his opinion in regard to these contracts?

Mr. ERVIN. The Attorney General wrote an opinion to the Secretary of Labor in which he states that if the Philadelphia plan is forbidden by the Civil Rights Act of 1964, title VII, it is invalid. That is what the Attorney General says. The Attorney General undertook to say that contractors who contract with the Government are not covered by the Civil Rights Act of 1964, title VII.

Subsection (b) of section 2000 E, states:

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers: *Provided further*, That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex or national origin and the President shall utilize his existing authority to effectuate this policy.

The Attorney General states in his opinion, in the first place, that these contractors, the people who seek contracts with the Government, are not covered by the act, although the act provides that all contractors, all employers employing at least 25 men, in a business affecting interstate commerce, are covered. So that first position of the Attorney General is without validity.

Then the Comptroller General said that subsection (j) of section 2000(e) (2) of title 42, United States Code, showed that the Philadelphia plan is contrary to

the act of Congress. That is title VII of the Civil Rights Act of 1964 and reads:

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

The Attorney General's opinion is very peculiar on this point—

Mr. PEARSON. Mr. President, if the Senator will yield just a moment, I think he has really answered my question. I would just like to make this one point: that is—with the help of the Senator from North Carolina—that the means by which the opinions were rendered first by the Comptroller General and then by the Attorney General of the United States, it seems to me, indicate there is some conflict between Congress and the executive branch of the Government. I am not sure that is terribly important. Perhaps the fact that there is a conflict of opinion between lawyers—which is always the case—is not so important as it is to find some way to find jobs and economic opportunities for the minorities in this country.

Underneath all the real issues here, I think we have the conflicting issue between an arm of Congress and the executive branch of the U.S. Government.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ERVIN. I would like to make one more statement and then yield the floor.

Mr. JAVITS. Mr. President, will the Senator yield? The facts are wrong.

Mr. FONG. Mr. President, I have the floor.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. FONG. I am very happy to yield to the Senator from New York.

Mr. JAVITS. The fact is that the Comptroller General did not rule at the request of the contractors. His own letter is the best evidence of that. His letter, addressed to the Secretary of Labor, dated August 5, 1969, reads as follows:

Questions have been submitted to our office by Members of Congress.

That is why he ruled. He was asked by Members of Congress, and so he ruled. So the Attorney General ruled when requested by the Secretary of Labor. It is just as simple as that.

Second, the statement was made that the Attorney General's opinion held that the contractors were not bound by the Civil Rights Act of 1964, but he held no such thing. I quote from the opinion:

Nothing in the Philadelphia Plan requires an employer to violate section 703(a) . . .

which is the kernel of the Civil Rights Act of 1964. The letter is plain and explicit. On my own time, I will try to elucidate this point. I did not want to let the record stand here with these statements unrefuted.

Mr. FONG. Mr. President, this matter embraces not only the opinions of the Attorney General and the Labor Department and the Comptroller General, but when one looks at the legalities involved, he will find the issue embraces the whole question of civil rights. There is no reason why this matter should be debated at this time, when all of us are ready to go home and to be with our families at Christmas. There is no reason why this matter could not be left over until January, when we come back, and take it up at that time. I cannot see any harm in deferring the matter until January, when we can have a full-fledged debate on this question.

The Labor Department has just issued a release relative to the rider which we have placed on the supplemental appropriations bill, which reads:

THE REVISED PHILADELPHIA PLAN

Last night the Senate Appropriations Committee tacked a rider on the Supplemental Appropriations Act which would end the Philadelphia Plan.

The Revised Philadelphia Plan constitutes the most effective, and indeed, the only effective means developed to date to deal with the nation's commitment to equal employment opportunity in the construction industry. The experience under the Plan has been excellent. Fourteen contracts containing the Plan's provisions have already been awarded and no significant objection has been raised in the locality to the award of these contracts.

The legality of the Department of Labor's Philadelphia Plan has been challenged by the Comptroller General despite a formal opinion of the Attorney General that the Plan is legal under the Civil Rights Act and a legitimate exercise of the Department's responsibility under Executive Order 11246.

The Senate Committee on Appropriations has added to a supplemental appropriations bill a Section 904 entitled "The Philadelphia Plan." Section 904 states that no fund appropriated by any act of Congress shall be available to finance any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute.

It is clear that this proposed legislation is directed specifically against the Department of Labor's Revised Philadelphia Plan, although it has far broader implications.

If the Senate of the United States enacts the proposed Section 904, the Department's Philadelphia Plan will be rendered totally ineffective. In addition, the Comptroller General has stated, despite contrary opinions by courts throughout the land, that the entire concept of affirmative action in the employment field is illegal.

Thus, Section 904, proposed as a rider to an appropriations bill, would, if enacted, destroy one of the most effective civil rights tools available to this Government and would set back the course of civil rights. The Senate of the United States could not possibly be contemplating any more disastrous piece of legislation at this time in our nation's history. The defeat of Section 904 is an absolute necessity.

The appropriation rider would end this program, which is just beginning to demonstrate its merits. Questions of the validity

of this Plan should be settled not by an appropriation rider or by the opinion of the Comptroller General. They should be determined by the courts in the same way as other issues affecting the civil rights of our citizens.

I have received from the Solicitor of the Department of Labor a paper entitled "Effects of the Rider to the Supplemental Appropriation Act." It reads:

1. The rider would transfer effective administrative control over wage determinations under the Davis-Bacon Act, the Walsh-Healey Public Contracts Act and the Service Contract Act to the Comptroller General. If he determined that a determination was improperly made, no funds could be used to finance the contract that incorporated that wage determination.

2. The rider would oust the jurisdiction of Contract Boards of Appeals in many instances. Regardless of decisions of a Board in favor of the contractor, the agency would not be able to make payment if the Comptroller General held any term of the agreement in violation of Federal law.

3. The rider would oust the jurisdiction of the Court of Claims. The Comptroller General has never considered himself bound by the judgment of the Court of Claims. If the Court of Claims entered a judgment for a contractor, funds would not be available to pay that judgment if the Comptroller General did not agree with the decision of the court on the legality of the contract.

4. All agency rules and regulations on the implementation of Title VI of the Civil Rights Act could be enforced only if the Comptroller General agreed on their legality—regardless of decisions of the courts.

Mr. President, it can be seen that this rider to the supplemental appropriation bill has broad implications. I do not think we could give to it the attention it deserves at this time in our legislative progress, because we are almost on the eve of sine die adjournment.

If the Comptroller General is correct, and since he is an arm of Congress, we as Senators should support him. But he may not be correct. If the Attorney General is correct, then, if we adopt this rider, we would have done an injustice to the whole Civil Rights program under the Philadelphia plan.

I feel that we should wait; that this is not the time to debate this issue. It is a highly important issue and should be carefully debated. It deserves research on the part of all Members of the Senate.

This matter came before the committee only yesterday. I have not really had an opportunity to go deeply into it. I think it would be unwise for us at this time to try to enact the provisions of the rider in the appropriation bill now before the Senate. This is a far-reaching question. The spirit and effect of the Civil Rights Act would be lessened if the Philadelphia plan were to be adopted as a rider.

Mr. President, I ask unanimous consent to have printed in the Record the rider to the supplemental appropriation bill; document "A" of the U.S. Department of Labor; the paper entitled "Sequential Steps Indicating How the Philadelphia Plan Operates"; and document "B," the order to the heads of all agencies of the Department of Labor from Arthur Fletcher, Assistant Secretary for Wage and Labor Standards.

There being no objection, the items

were ordered to be printed in the Record, as follows:

SEC. 904. In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute.

[Document "A"]

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., June 27, 1969.

MEMORANDUM

To: Heads of all agencies.

From: Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards.

Subject: Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

1. *Purpose:* The purpose of this Order is to implement the provisions of Executive Order 11246, and the rules and regulations issued pursuant thereto, requiring a program of equal employment opportunity by Federal contractors and subcontractors and Federally-assisted construction contractors and subcontractors.

2. *Applicability:* The requirements of this Order shall apply to all Federal and Federally-assisted construction contracts for projects the estimated total cost of which exceeds \$500,000, in the Philadelphia area, including Bucks, Chester, Delaware, Montgomery and Philadelphia counties in Pennsylvania.

3. *Policy:* In order to promote the full realization of equal employment opportunity on Federally-assisted projects, it is the policy of the Office of Federal Contract Compliance that no contracts or subcontracts shall be awarded for Federal and Federally-assisted construction in the Philadelphia area on projects whose cost exceeds \$500,000 unless the bidder submits an acceptable affirmative action program which shall include specific goals of minority manpower utilization, meeting the standards included in the invitation or other solicitation for bids, in trades utilizing the following classifications of employees:

Iron workers.
Plumbers, pipefitters.
Steamfitters.
Sheetmetal workers.
Electrical workers.
Roofers and water proofers.
Elevator construction workers.

4. *Findings:* Enforcement of the nondiscrimination and affirmative action requirements of Executive Order 11246 has posed special problems in the construction trades. Contractors and subcontractors must hire a new employee complement for each construction job and out of necessity or convenience they rely on the construction craft unions as their prime or sole source of their labor. Collective bargaining agreements and/or established custom between construction contractors and subcontractors and unions frequently provide for, or result in, exclusive hiring halls; even where the collective bargaining agreement contains no such hiring hall provisions or the custom is not rigid, as a practical matter, most people working in these classifications are referred to the jobs by the unions. Because of these hiring arrangements, referral by a union is a virtual necessity for obtaining employment in union construction projects, which constitute the bulk of commercial construction.

Because of the exclusionary practices of labor organizations, there traditionally has been only a small number of Negroes employed in these seven trades. These exclusionary practices include: (1) failure to admit Negroes into membership and into apprenticeship programs. At the end of 1967, less than one-half of one percent of the membership of the unions representing employees in these seven trades were Negro, although the population in the Philadelphia area during the past several decades included substantial numbers of Negroes. As of April 1965, the Commission on Human Relations in Philadelphia found that unions in five trades (plumbers, steamfitters, electrical workers, sheet metal workers and roofers) were "discriminatory" in their admission practices. In a report by the Philadelphia Local AFL-CIO Human Relations Committee made public in 1964, virtually no Negro apprentices were found in any of the building trades classes;¹ (2) failure of the unions to refer Negroes for employment, which has resulted in large measure from the priorities in referral granted to union members and to persons who had work experience under union contracts.

On November 30, 1967, the Philadelphia Federal Executive Board put into effect the Philadelphia Pre-Award Plan. The Federal Executive Board found that² the problem of compliance with the requirements of Executive Order 11246 was most apparent in Philadelphia in eight construction trades: electrical, sheetmetal, plumbing and pipefitting, steamfitting, roofing and waterproofing, structural iron work, elevator construction and operating engineers; and that local unions representing employees in these trades in the Philadelphia area had few minority group members and that few minority group persons had been accepted in apprenticeship programs. In order to assure equal employment opportunity on Federal and Federally-assisted construction in the Philadelphia area, the plan required that each apparent low bidder, to qualify for a construction contract or subcontract, must submit a written affirmative action program which would have the results of assuring that there will be minority group representation in these trades.

Since the Philadelphia Plan was put into effect, some progress has been made. Several groups of contractors and Local 543 of the International Union of Operating Engineers have developed an area program of affirmative action which has been approved by OFCC in lieu of other compliance procedures, but subject to periodic evaluation. The original Plan was suspended because of an Opinion by the Comptroller General that it violated the principles of competitive bidding.

Equal employment opportunity in these trades in the Philadelphia area is still far from a reality. The unions in these trades still have only about 1.6 percent minority group membership and they continue to engage in practices, including the granting of referral priorities to union members and to persons who have work experience under union contracts, which result in few Negroes being referred for employment. We find, therefore, that special measures are required to provide equal employment opportunity in these seven trades.

In view of the foregoing, and in order to implement the affirmative action obligations imposed by the equal employment opportunity clause in Executive Order 11246, and in order to assure that the require-

¹ Marshall and Briggs, *Negro Participation in Apprenticeship Programs* (Dec. 1966), pg. 91.

² These findings were based on a detailed examination of available facts relating to building trades unions, area construction volume and demographic data.

ments of this Order conform to the principles of competitive bidding, as construed by the Comptroller General of the United States, the Office of Federal Contract Compliance finds that it is necessary that this Order, requiring bidders to commit themselves to specific goals of minority manpower utilization, be issued.

5. Acceptability of Affirmative Action Programs: A bidder's affirmative action program will be acceptable if the specific goals set by the bidder meet the definite standards determined in accordance with Section 6 below. Such goals shall be applicable to each of the designated trades to be used in the performance of the contract whether or not the work is to be subcontracted. However, participation in a multi-employer program approved by OFCC shall be acceptable in lieu of a goal for the trade involved in such training program. In no case shall there be any negotiation over the provisions of the specific goals submitted by the bidder after the opening of bids and prior to the award of the contract.

6. Specific Goals and Definite Standards:
a. General. The OFCC Area Coordinator, in cooperation with the Federal contracting or administering agencies in the Philadelphia area, will determine the definite standards to be included in the invitation for bids or other solicitation used for every Federally-involved construction contract in the Philadelphia area, when the estimated total cost of the construction project exceeds \$500,000. Such definite standards shall specify the range of minority manpower utilization expected for each of the designated trades to be used during the performance of the construction contract. To be eligible for the award of the contract, the bidder must, in the affirmative action program submitted with his bid, set specific goals of minority manpower utilization which meet the definite standard included in the invitation or other solicitation for bids unless the bidder participates in an affirmative action program approved by OFCC.

b. Specific Goals.

(1) The setting of goals by contractors to provide equal employment opportunity is required by Section 60-1.40 of the Regulations of this Office (41 CFR § 60-1.40). Further, such voluntary organization of businessmen as Plans for Progress have adopted this sound approach to equal opportunity just as they have used goals and targets for guiding their other business decisions. (See the Plans for Progress booklet *Affirmative Action Guidelines* on page 6.)

(2) The purpose of the contractor's commitment to specific goals is to meet the contractor's affirmative action obligations and is not intended and shall not be used to discriminate against any qualified applicant or employee.

c. Factors Used in Determining Definite Standards. A determination of the definite standard of the range of minority manpower utilization shall be made for each better-paid trade to be used in the performance of the contract. In determining the range of minority manpower utilization that should result from an effective affirmative action program, the factors to be considered will include, among others, the following:

(1) The current extent of minority group participation in the trade.

(2) The availability of minority group persons for employment in such trade.

(3) The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.

(4) The impact of the program upon the existing labor force.

7. Invitation for Bids or Other Solicitations for Bids: Each Federal agency shall include, or require the applicant to include, in the invitation for bids, or other solicitation used for a Federally-involved construction contract, when the estimated total cost of the

construction project exceeds \$500,000 a notice stating that to be eligible for award, each bidder will be required to submit an acceptable affirmative action program consisting of goals as to minority group participation for the designated trades to be used in the performance of the contract—whether or not the work is subcontracted. Such notice shall include the determination of the range of minority group utilization (described in Section 6 above) that should result from an effective affirmative action program based on an evaluation of the factors listed in Section 6c. The form of such notice shall be substantially similar to the one attached as an appendix to this Order. To be acceptable, the affirmative action program must contain goals which are at least within the range described in the above notice. Such goals must be provided for each designated trade to be used in the performance of the contract except that goals are not required with respect to trades covered by an OFCC approved multi-employer program.

8. Post-Award Compliance: a. Each agency shall review contractors' and subcontractors' employment practices during the performance of the contract. If the goals set forth in the affirmative action program are being met, the contractor or subcontractor will be presumed to be in compliance with the requirements of Executive Order 11246, as amended, unless it comes to the agency's attention that such contractor or subcontractor is not providing equal employment opportunity. In the event of failure to meet the goals, the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment. In any proceeding in which such good faith performance is in issue, the contractor's entire compliance posture shall be reviewed and evaluated in the process of considering the imposition of sanctions. Where the agency finds that the contractor or subcontractor has failed to comply with the requirements of Executive Order 11246, the implementing regulations and its obligations under its affirmative action program, the agency shall take such action and impose such sanctions as may be appropriate under the Executive Order and the regulations. Such noncompliance by the contractor or subcontractor shall be taken into consideration by Federal agencies in determining whether such contractor or subcontractor can comply with the requirements of Executive Order 11246 and is therefore a "responsible prospective contractor" within the meaning of the Federal procurement regulations.

b. It is no excuse that the union with which the contractor has a collective bargaining agreement failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964. It is the longstanding uniform policy of OFCC that contractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in Federally-involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, or the implementing rules, regulations and orders.

9. Exemptions:

a. Requests for exemptions from this Order must be made in writing, with justification, to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C., 20210, and shall be forwarded

warded through and with the endorsement of the agency head.

b. The procedures set forth in the Order not apply to any contract when the head of the contracting or administering agency determines that such contract is essential to the national security and that its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within thirty days.

c. Nothing in this Order shall be interpreted to diminish the present contract compliance review and complaint programs.

10. Authority: The Order is issued pursuant to Executive Order 11246 (30 F.R. 12319, Sept. 28, 1965) Parts II and III; Executive Order 11375 (32 F.R. 14303, Oct. 17, 1967); and 41 CFR Chapter 60.

11. Effective Date: The provisions of this Order will be effective with respect to transactions for which the invitations for bids or other solicitations for bids are sent on or after July 18, 1969.

APPENDIX

(For inclusion in the Invitation or Other Solicitation for Bids for a Federally-Involved Construction Contract When the Estimated Total Cost of the Construction Project Exceeds \$500,000.)

NOTICE OF REQUIREMENT FOR SUBMISSION OF AFFIRMATIVE ACTION PLAN TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. It has been determined that in the performance of this contract an acceptable affirmative action program for the trades specified below will result in minority manpower utilization within the ranges set forth next to each trade:

Identification of trade

Range of minority group employment

2. The bidder shall submit, in the form specified below, with his bid an affirmative action program setting forth his goals as to minority manpower utilization in the performance of the contract in the trades specified below, whether or not the work is subcontracted.

The bidder submits the following goals of minority manpower utilization to be achieved during the performance of the contract:

Identification of trade

Estimated total employment for the trade on contract

Number of minority group employees

(The bidder shall insert his goal of minority manpower utilization next to the name of each trade listed.)

3. The bidder also submits that whenever he subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he will obtain from such subcontractor an appropriate goal that will enable the bidder to achieve his goal for that trade. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth in paragraph 1 above, provided, however, that participation by the bidder in multi-employer program approved by the Office of Federal Contract Compliance will be accepted as satisfying the requirements of this Notice in lieu of submission of goals with respect to the trades covered by such multi-employer program. In the event that such multi-employer program is applicable, the bidder

need not set forth goals in paragraph 2 above for the trades covered by the program.

5. For the purpose of this Notice, the term minority means Negro, Oriental, American Indian and Spanish Surnamed American. Spanish Surnamed American includes all persons of Mexican, Puerto Rican, Cuban or Spanish origin or ancestry.

6. The purpose of the contractor's commitment to specific goals as to minority manpower utilization is to meet his affirmative action obligations under the equal opportunity clause of the contract. The commitment is not intended and shall not be used to discriminate against any qualified applicant or employee.

7. Nothing contained in this Notice shall relieve the contractor from compliance with the provisions of Executive Order 11246 and the equal opportunity clause of the contract with respect to matters not covered in this Notice, such as equal opportunity in employment in trades not specified in this Notice.

8. The bidder agrees to keep such records and to file such reports relating to the provisions of this Order as shall be required by the contracting or administering agency.

[From the U.S. Department of Labor, Wage and Labor Standards Administration, Washington, D.C., December 1969]

SEQUENTIAL STEPS INDICATING HOW THE PHILADELPHIA PLAN OPERATES INTRODUCTION

This paper portrays the actual administration of the Philadelphia Plan by the Office of Federal Contract Compliance (hereinafter referred to as OFCC) and by those Federal agencies having Federal and Federally-assisted construction projects in the five county Philadelphia area. It does not purport to contain an explanation of the carefully devised procedure under which ranges of minority manpower utilization are established. A detailed explanation of the method by which the ranges were devised for the Philadelphia area is set forth in OFCC Memorandum dated June 27, 1969, and OFCC Order dated September 23, 1969 (copies of which are annexed hereto, marked "A" and "B," respectively, and incorporated herein).

Further, this paper does not purport to answer such legal questions as have been raised concerning the validity of the ranges. A complete explanation of the legal basis for the ranges is contained in the Opinion of the Attorney General dated September 22, 1969, and Legal Memoranda prepared by the Solicitor of Labor.

STEPS IN ADMINISTRATION OF THE PHILADELPHIA PLAN

Step 1: The Philadelphia Plan became applicable, as set forth in Section 10 of OFCC Order of September 23, 1969, with respect to transactions for which the invitations for bids or other solicitations for bids were sent on or after September 29, 1969. Prior to this date, OFCC Memorandum of June 27, 1969, and OFCC Order of September 23, 1969, were disseminated to those Federal agencies which it was anticipated would be involved in the administration of the Philadelphia Plan. (A list of these agencies is contained in the document, annexed hereto marked "C," and incorporated herein.)

Step 2: Those Federal agencies, listed in document "C" referred to above, are required to notify applicants, contractors and subcontractors of the content and the operation of the Philadelphia Plan. All such agencies are responsible for monitoring the progress of the Plan, from the initial stages of a project through to its completion, receiving reports from contractors, determining whether proper records are being kept, and obtaining compliance. In discharging this responsibility, OFCC is responsible for general policy direction of the agencies' efforts

and for eliminating any possibility of duplication of effort.

Step 3: Every Federal agency responsible for administration of the Philadelphia Plan includes and requires all applicants for Federal assistance, as defined by Executive Order 11246, to include copies of OFCC Memorandum of June 27, 1969, and OFCC Order of September 23, 1969, in each invitation or other such solicitation for bids. All project advertisements include a statement that the project is subject to the Philadelphia Plan and that the contractor and subcontractors must be Equal Opportunity Employers as required by Executive Order 11246 and regulations promulgated thereunder.

Step 4: Normally, pre-bid conferences are held to discuss technical and other aspects of a particular project. At each such conference, those in attendance are given a detailed explanation of how the Plan operates and are afforded an opportunity to ask any questions they might have concerning the Plan. Every bidder can receive specific guidance as to how to prepare and submit his goals for each of the designated trades.

Step 5: In preparing and submitting his goals, a contractor uses the format contained in the Appendix to OFCC Order of September 23, 1969. (This Appendix is a part of document "B.") After reviewing his own labor force needs and those of prospective subcontractors, the bidder chooses and inserts his goals of minority manpower utilization next to the name of each trade listed for those years during which it is contemplated he will perform any work or engage in any activity under the contract. The goals, which are the result of the contractor's own determination of his ability to employ minority persons in the trades listed in the Philadelphia Plan, in this form are then submitted by the contractor and are included as part of his bid.

If a portion of the project is to be subcontracted, the contractor must include appropriate goals in each subcontract and these goals become the goals of his subcontractor. However, the prime contractor is not accountable for the failure of his subcontractor to make every good-faith effort to meet his goals. A subcontractor is accountable for his own effort to comply with the requirements of the Plan. Therefore, any such goals should be selected by a contractor only after consultation with all known subcontractors.

Step 6: All bids and goals submitted are reviewed by the administering agency. To be eligible for the award of the contract, the bidder must select goals for each trade and for every year which he is involved on the project falling within the ranges set forth in the Order of September 23, 1969. The lowest responsive and responsible bidder who submits goals within the established ranges is awarded the contract by the administering agency. In no instance are there any negotiations over the provisions of the specific goals submitted by a bidder after the opening of the bids and prior to the award of a contract. At any post-award conference and at other times after the award of the contract, the Federal agency administering the project is available for consultation and to assist the contractor in meeting his commitment. Additional assistance will be provided, where needed, in regard to training, recruitment, career and work counseling, community relations and in such other areas as may be necessary.

Step 7: Every contractor and subcontractor is required to keep a record of his employment practices. This record must be available upon inspection of the project by the responsible Federal agency. Any such record should include those documents necessary to establish compliance with the terms of the Philadelphia Plan. Where a contractor or subcontractor has not achieved his chosen goals, such record should include

documentation of those steps taken in a good faith effort to meet his commitment.

Step 8: Each agency is to review contractor's and subcontractor's employment practices at various intervals during the performance of a contract. A report of each review is to be made to OFCC by the responsible Federal agency. If all goals are being met, the contractor or subcontractor is presumed to be in compliance with the terms of the Philadelphia Plan and the Executive Order. If a contractor or subcontractor fails to meet the goals, he will be given the opportunity to demonstrate that he made every good-faith effort to meet his commitment.

Step 9: In the event that a contractor or subcontractor has not met his commitment, he shall be so informed in writing by the responsible Federal agency. A conference shall be scheduled at which the contractor or subcontractor will be given an initial opportunity to demonstrate that he has made a good-faith effort. If after the meeting the agency is of the opinion that the contractor or subcontractor did not make every good-faith effort to fulfill his commitment, he will be given a reasonable time to take corrective action.

(OFCC Order of September 23, 1969, in Section 5, sets forth specific criteria for determining good faith and provides guidance to a contractor or subcontractor as to some of those activities which would constitute a minimum level of effort.)

Step 10: Before the sanctions of cancellation, termination, suspension or debarment are imposed against any contractor or subcontractor, he will be given the further opportunity to request a formal hearing. All such hearings will be conducted in accordance with the requirements of Executive Order 11246 and regulations promulgated thereunder. In each case the Director of OFCC, or the appropriate agency head, shall appoint a hearing examiner who shall hear all the facts and report his findings to the agency head for a decision or to the Director of OFCC for a final determination.

Only after these steps, including a formal hearing (where requested) and a determination by the Director of OFCC of inadequate good-faith efforts in meeting the requirements of the Philadelphia Plan, will sanctions be imposed by the Federal Government.

[Document "B"]

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., September 23, 1969.

ORDER

To: Heads of all agencies.

From: Arthur A. Fletcher Assistant Secretary for Wage and Labor Standards.

John L. Wilks, Director, Office of Federal Contract Compliance.

Subject: Establishment of Ranges for the Implementation of the Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

1. *Purpose:* The purpose of this Order is to implement Section 6 of the Order issued on June 27, 1969 by Assistant Secretary of Labor Arthur A. Fletcher to the Heads of Agencies outlining a "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction." Section 6 of the June 27 Order provides for the determination of definite standards in terms of ranges of minority manpower utilization. This Order also affirms and in certain respects amends the Order of June 27.

2. *Background:* The June 27 Order requires a bidder on Federal or Federally-assisted construction in the Philadelphia area on projects whose cost exceeds \$500,000 to submit an acceptable affirmative action program which shall include specific goals of minority man-

power utilization within the ranges to be established by the Department of Labor, in cooperation with the Federal contracting and administering agencies in the Philadelphia Area, within the following 7 listed classifications:

Iron workers, plumbers, pipefitters, steamfitters, sheetmetal workers, electrical workers, roofers and water proofers, elevator construction workers.

Since that time the Department has determined that minority craftsmen may be adequately represented in the classification and title "roofers and water proofers". For this reason, such classification is hereby temporarily excepted from the provisions of the "Revised Philadelphia Plan," subject to further examination of that trade.

Pursuant to a notice of hearing issued on August 16, 1969, representatives of the Department of Labor conducted a public hearing in Philadelphia on August 26, 27, and 28, 1969 for the purpose of obtaining information and data relevant to the establishment of ranges for the purpose of effectuating the above-referred to June 27, 1969 Order. Section 6 of such Order provides that the following factors, among others, will be used in establishing these ranges:

(a) The current extent of minority group participation in the trade.

(b) The availability of minority group persons for employment in such trade.

(c) The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.

(d) The impact of the program upon the existing labor force.

Having reviewed the record of that hearing and additional relevant data gathered and compiled by the Department of Labor, the following findings and Order are made as contemplated by the Order of June 27, 1969.

3. *Findings (a) Minority Participation in the Specified Trades*—The over-all construction industry in the five county Philadelphia area has a current minority representation of employees of 30%. Comparable skilled trades, excluding laborers, have a minority representation of approximately 12%. The construction trades in the Philadelphia area have grown and developed under similar conditions concerning manpower availability and under identical economic and cultural circumstances. Despite that fact, there are few minorities in the above-designated six trades. The evidence adduced at the public hearing indicates that the minority participation in such trades is approximately 1%. In the June 27 Order, it was found that such a low rate of participation is due to the traditional exclusionary practices of these unions in admission to membership and apprenticeship programs and failure to refer minorities to jobs in these trades. The most reliable data available relates to minority participation in membership in the unions representing employees in the six trades. That data reveals the following:

(1) *Iron workers*: The total union membership in this craft in the Philadelphia area in 1969 is 850, 12 of whom (1.4%) are minority group representatives.

(2) *Steamfitters*: Total union membership in the Philadelphia area in 1969 stands at 2,308, 13 of whom (.65%) are minority group representatives.

(3) *Sheetmetal workers*: Total union membership in the Philadelphia area in 1969 stands at 1,688, 17 of whom (1%) are minority group representatives.

(4) *Electricians*: Total union membership in the Philadelphia area in 1969 stands at 2,274, 40 of whom (1.76%) are minority group representatives.

(5) *Elevator construction workers*: Total union membership in the Philadelphia area in 1969 stands at 562, 3 of whom (.54%) are minority group representatives.

(6) *Plumbers and pipefitters*: Total union membership in the Philadelphia area in 1969

stands at 2,335, 12 of whom (.51%) are minority group representatives.

Based upon these figures it is found and determined that the present minority participation in the six named trades is far below that which should have reasonably resulted from participation in the past without regard to race, color and national origin and, further, that such participation is too insignificant to have any meaningful bearing upon the ranges established by this Order.

(b) *Availability of minority group persons for employment*: The nonwhite unemployment rate in the Philadelphia area is approximately twice that for the labor force as a whole and the total number of nonwhite persons unemployed is approximately 21,000. There is also a substantial number of persons in the nonwhite labor force who are underemployed. Testimony adduced at the hearing indicates that there are between 1,200 and 1,400 minority craftsmen presently available for employment in the construction trades who have been trained and/or had previous work experience in the trades. In addition it was revealed at the hearing that there is a pool of 7,500 minority persons in the Laborers Union who are working side by side with journeymen in the performance of their crafts in the construction industry. Many of these persons are working as helpers to the journeymen in the designated trades. Also, testimony at the hearings established that between 5,000 and 8,000 prospective minority craftsmen would be prepared to accept training in the construction crafts within a year's time if they would be assured that jobs were available to them upon completion of such training.

Surveys conducted by agencies of the U.S. Department of Labor have provided additional information relative to the availability of minority group persons for employment in the designated trades.

Based upon the number of minority group persons employed in the designated trades for all industries (construction and non-construction) and those minority group persons who are unemployed but qualified for employment in the designated trades, a survey by the Manpower Administration indicated that minority group persons are now in the area labor market as follows:

Identification of trades and number available:

Ironworkers	302
Plumbers, pipefitters and steamfitters ..	797
Sheetmetal workers	250
Electrical workers	745

A survey by the Office of Federal Contract Compliance indicated that the following number of minority persons are working in the designated trades and those who will be trained by 1970 by major Philadelphia recruitment and training agencies and those working in related occupations in non-construction industries who would be qualified for employment in the designated trades with some orientation or minimal training:

Identification of trades and number available:

Ironworkers	75
Plumbers, pipefitters	500
Steamfitters	300
Sheetmetal workers	375
Electrical workers	525
Elevator constructors	43

Based upon this information it is found that a substantial number of minority persons are presently available for productive employment.

(c) *The need for training*: Testimony at the public hearing revealed that there is a need for training programs for willing minority group persons at various levels of skill. Such training must necessarily range from pre-apprenticeship training programs through programs providing incidental train-

ing for skilled craftsmen who are near the brink of full journeyman status.¹ As discussed above, between 5,000 and 8,000 minority group persons are in a position to be recruited for such training within a year's time.

Testimony at the public hearings revealed the existence of several training programs which have operated successfully to train a number of craftsmen many of whom are now prepared to enter the trades in the construction industry. In order to further assure the availability of necessary training programs, the Manpower Administration of this Department has committed substantial funds for the development of additional apprenticeship outreach programs and journeyman training programs in the Philadelphia area. It plans to double the present apprenticeship outreach program with the Negro Union Leadership Council in Philadelphia. Presently, this program is funded for \$78,000 to train seventy persons. An additional \$80,000 is being set aside to expand this program. In addition, immediate exploration of the feasibility of a journeyman-training program for approximately 180 trainees will be undertaken. Both these programs will be directed specifically to the designated trades.²

(d) *The impact of the program upon the existing labor force*: A national survey of the Bureau of Labor Statistics indicates that the present annual attrition rate of construction trade membership due to retirement is 2.5% per year based upon a total working life of 44 years per employee in each of the above-designated trades.

Based on national actuarial rates for the construction industry published by the National Safety Council, the average disability occurrence rate resulting from death or injury is 1% per year. A conservative estimate of the average rate at which employees leave construction crafts for all reasons other than death, disability and retirement is 4% per year.

Therefore, each construction craft should have approximately 7.5% new job openings each year without any growth in the craft. The annual growth in the number of employees in each craft designated under this "Revised Philadelphia Plan" has been and is projected to be as follows:

(1) *Iron workers*: The average annual growth rate since 1963 has been approximately 10%. It is projected that an average annual growth rate in employment will be 3.69% in the near future.³

(2) *Plumbers and pipefitters*: The average annual growth rate since 1963 has been approximately 7.38%. It is projected that an average annual growth rate in employment will be 2.9% in the near future.

(3) *Steamfitters*: The average annual growth rate since 1963 has been approximately 2.63% and is projected to be approximately 2.5% for each of the next four years.

(4) *Sheetmetal workers*: The average annual growth rate since 1963 has been approximately 2.06% and is projected to be approximately 2.0% for each of the next four years.

(5) *Electricians*: The average annual

¹ Testimony adduced at the hearings indicates that the traditional duration of training to develop competent workmen in the crafts may be longer than necessary to successfully perform substantial amounts of craft level work.

² Memorandum from Arnold R. Weber, Assistant Secretary for Manpower to Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards, dated September 18, 1969.

³ Projections of the annual growth rate in employment in the designated trades is based on a study by the Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Employment Security, entitled *1960 Census and 1970, 1975 Projected Total Employment*.

growth rate since 1963 has been approximately 4.98%. It is projected that an average annual growth rate in employment will be 2.2% in the near future.

(6) *Elevator Construction Workers.* The average annual growth rate since 1963 has been approximately 2.41% and is projected to be approximately 2.1% for each of the next four years.

Adding the rate of jobs becoming vacant due to attrition to the rate of new jobs due to growth, the total rate of new jobs projected for each craft is as follows:

Percentage of annual vacancy rate

Identification of trade:

Ironworkers	11.2
Plumbers and pipefitters.....	10.4
Steamfitters	10
Sheetmetal workers.....	9.5
Electrical workers	9.7
Elevator construction workers.....	9.6

Therefore, it is found and determined that a contractor could commit to minority hiring up to the annual rate of job vacancies for each trade without adverse impact upon the existing labor force.

(e) *Timetable:* In an effort to provide practical ranges which can be met by employers in hiring productive trained minority craftsmen, this Order should be developed to cover an extended period of time.

The average length of Federally-involved construction projects in the Area is between 2 and 4 years. Testimony at the hearing indicated that a 4 year duration for the "Plan" is proper.

Therefore, it is found and determined that in order for this Order to effect equal employment to the fullest extent, the standards of minority manpower utilization should be determined for the next four years.

(f) *Conclusion of findings:* It is found that present minority participation in the designated trades is far below that which should have reasonably resulted from participation in the past without regard to race, color, or national origin and, further, that such participation is too insignificant to have any meaningful bearing upon the ranges established by this Order.

It is found that a significant number of minority group persons is presently available for employment as journeymen, apprentices, or other trainees.

It is found that there is a need for training programs for willing minority group persons at various levels of skill. There exist several training programs in the Philadelphia area which have operated successfully to train craftsmen prepared to enter the construction industry and, in addition, the Manpower Administration of this Department has committed substantial funds for the development of other apprenticeship outreach programs and journeyman training programs in the Philadelphia area.

Finally, it is found that a contractor could commit himself to hiring minority group persons up to the annual rate of job vacancies for each trade without adverse impact upon the existing labor force in the designated trades.

Based upon these findings, a range shall be established by this Order which shall require contractors to establish employment goals between a low range figure which could result in approximately 20% of the workforce in each designated trade being minority craftsmen at the end of the fourth year covered by this Order.⁴

In addition, trained and trainable minority

⁴ Assuming the same proportion of minorities are employed on private construction projects as Federally-involved projects, the lower range should result in 2,000 minority craftsmen being employed in the construction industry in the Philadelphia area by the end of the fourth year.

persons are or shall be available in numbers sufficient to fill the number of jobs covered by these ranges, there being 1200 to 1400 minority persons who have had training and 5000 to 8000 prepared to accept training within a year.

Such minority representation can be accomplished without adversely affecting the present work force. Based upon the projected Annual Vacancy Rate, the lower range figure may be met by filling vacancies and new jobs approximately on the basis of one minority craftsman for each non-minority craftsman.⁵

4. *Order:* Therefore, after full consideration and in light of the foregoing, be it ordered: That the Order of June 27, 1969 entitled "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction" is hereby implemented, affirmed, and in certain respects amended, this Order to constitute a supplement thereto as required and contemplated by said Order of June 27, 1969.

Further ordered: That the following ranges are hereby established as the standards for minority manpower utilization for each of the designated trades in the Philadelphia area for the next four years:

Range of minority group employment until Dec. 31, 1970

[Percent]

Identification of trade:

Ironworkers	15-9
Plumbers and pipefitters.....	5-8
Steamfitters	5-8
Sheetmetal workers.....	4-8
Electrical workers	4-8
Elevator construction workers.....	4-8

Range of minority group employment for the calendar year 1971²

[Percent]

Identification of trade:

Ironworkers	11-15
Plumbers and pipefitters	10-14
Steamfitters	11-15
Sheetmetal workers	9-13
Electrical workers	9-13
Elevator construction workers	9-13

¹ The percentage figures have been rounded.

² After December 31, 1970 the standards set forth herein shall be reviewed to determine whether the projections on which these ranges are based adequately reflect the construction labor market situation at that time. Reductions or other significant fluctuations in federally involved construction shall be specifically reviewed from time-to-time as to their effect upon the practicality of the standards. In no event, however, shall the standards be increased for contracts after bids have been received.

Range of minority group employment for the calendar year 1972

[Percent]

Identification of trade:

Ironworkers	16-20
Plumbers and pipefitters.....	15-19
Steamfitters	15-19
Sheetmetal workers.....	14-18
Electrical workers.....	14-18
Elevator construction workers.....	14-18

Range of Minority group employment for the calendar year 1973

[Percent]

Identification of trade:

Ironworkers	22-26
Plumbers and pipefitters.....	20-24

⁵ The one for one ratio in hiring has been judicially recognized as a reasonable, if not mandatory, requirement to remedy past exclusionary practices. *Vogler v. McCarty, Inc.*, 294 F. Supp. 368 (E.D. La. 1967).

Range of Minority group employment for the calendar year 1973—Continued

[Percent]

Steamfitters	20-24
Sheetmetal workers.....	19-23
Electrical workers.....	19-23
Elevator construction workers.....	19-23

The above ranges are expressed in terms of man hours to be worked on the project by minority personnel and must be substantially uniform throughout the entire length of the project for each of the designated trades.

Further ordered: That the form attached hereto as an Appendix is hereby made a part of this Order and in accordance with the findings specified above, amends the Appendix of the Order of June 27, 1969.

Each Federal agency shall include, or require the applicant to include, this form, or one substantially similar, in the invitation for bids or other solicitations used for a Federally-involved construction contract where the estimated total cost of the construction project exceeds \$500,000.

5. *Criteria for measuring good faith:* Section 8 of the June 27 Order provides that a contractor will be given an opportunity to demonstrate that he has made every good faith effort to meet his goal of minority manpower utilization in the event he fails to meet such goal. If the contractor has failed to meet his goal, a determination of "good faith" will be based upon his efforts to broaden his recruitment base through at least the following activities:

(a) The OFCC Area Coordinator will maintain a list of community organizations which have agreed to assist any contractor in achieving his goal of minority manpower utilization by referring minority workers for employment in the specified trades. A contractor who has not met his goals may exhibit evidence that he has notified such community organizations of opportunities for employment with him on the project for which he submitted such goals as well as evidence of their response.

(b) Any contractor who has not met his goal may show that he has maintained a file in which he has recorded the name and address of each minority worker referred to him and specifically what action was taken with respect to each such referred worker. If such worker was not sent to the union hiring hall for referral or if such worker was not employed by the contractor, the contractor's file should document this and the reasons therefor.

(c) A contractor should promptly notify the OFCC Area Coordinator in order for him to take appropriate action whenever the union with whom the contractor has a collective bargaining agreement has not referred to the contractor a minority worker sent by the contractor or the contractor has other information that the union referral process has impeded him in his efforts to meet his goal.

(d) The contractor should be able to demonstrate that he has participated in and availed himself of training programs in the area, especially those funded by this Department referred to in Section 3(c) of this Order, designed to provide trained craftsmen in the specified trades.

6. *Subcontractors:* Whenever a prime contractor subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he shall include his goals in such subcontract and those goals shall become the goals of his subcontractor who shall be bound by them and by this Order to the full extent as if he were the prime contractor. The prime contractor shall not be accountable for the failure of his subcontractor to meet such goals or to make every good faith effort to meet them. However, the prime contractor shall give notice to the Area Coordinator

of the Office of Federal Contract Compliance of the Department of Labor of any refusal or failure of any subcontractor to fulfill his obligations under this Order. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

7. *Exemptions:* a. Requests for exemptions from this Order must be made in writing, with justification to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210, and shall be forwarded through and with the endorsement of the agency head.

b. The procedures set forth in the Order shall not apply to any contract when the head of the contracting or administering agency determines that such contract is essential to the national security and that its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within thirty days.

c. Nothing in this Order shall be interpreted to diminish the present contract compliance review and complaint programs.

8. *Effect of this order:* In the case of any inconsistency between this Order and the June 27, 1969 Order prescribing a "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction", this Order shall prevail.

9. *Authority:* This Order is issued pursuant to Executive Order 11246 (30 F.R. 12319, September 28, 1965) Parts II and III; Executive Order 11375 (32 F.R. 14303, Oct. 17, 1967); and 41 CFR Chapter 60.

10. *Effective date:* The provisions of this Order will be effective with respect to transactions for which the invitations for bids or other solicitations for bids are sent on or after September 29, 1969.

APPENDIX 1

(For inclusion in the Invitation or Other Solicitation for Bids for a Federally-Involved Construction Contract When the Estimated Total Cost of the Construction Project Exceeds \$500,000.)

NOTICE OF REQUIREMENT FOR SUBMISSION OF AFFIRMATIVE ACTION PLAN TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. It has been determined that in the performance of this contract an acceptable affirmative action program for the trades specified below will result in minority manpower utilization within the ranges set forth next to each trade:

Range of minority group employment until December 31, 1970

[Percent]

Identification of trade:	
Ironworkers	5-9
Plumbers and pipefitters	5-8
Steamfitters	5-8
Sheetmetal workers	4-8
Electrical workers	4-8
Elevator construction workers	4-8

Range of minority group employment for the calendar year 1971

[Percent]

Identification of trade:	
Ironworkers	11-15
Plumbers and pipefitters	10-14
Steamfitters	11-15
Sheetmetal workers	9-13
Electrical workers	9-13
Elevator construction workers	9-13

APPENDIX 2

Range of minority group employment for the calendar year 1972

[Percent]

Identification of trade:	
Ironworkers	16-20
Plumbers and pipefitters	15-19
Steamfitters	15-19
Sheetmetal workers	14-18
Electrical workers	14-18
Elevator construction workers	14-18

Range of minority group employment for the calendar year 1973

[Percent]

Identification of trade:	
Ironworkers	22-26
Plumbers and pipefitters	20-24
Steamfitters	20-24
Sheetmetal workers	19-23
Electrical workers	19-23
Elevator construction workers	19-23

2. The bidder shall submit, in the form specified below, with his bid an affirmative action program setting forth his goals as to minority manpower utilization in the performance of the contract in the trades specified below, whether or not the work is subcontracted.

The bidder submits the following goals of minority manpower utilization to be achieved during the performance of the contract:

Identification of trade	Estimated total employment for the trade on the contract until Dec. 31, 1970	Number of minority group employees until Dec. 31, 1970
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

APPENDIX 3

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1971	Number of minority group employees for the calendar year 1971
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1972	Number of minority group employees for the calendar year 1972
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1973	Number of minority group employees for the calendar year 1973
Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

Ironworkers		
Plumbers and pipefitters		
Steamfitters		
Sheetmetal workers		
Electrical workers		
Elevator construction workers		

(The bidder shall insert his goal of minority manpower utilization next to the name of each trade listed for those years during which it is contemplated that he shall perform any work or engage in any activity under the contract.)

3. The bidder also submits that whenever he subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he shall include his goal in such subcontract and those goals shall become the goals of his subcontractor who shall be bound by them to the full extent as if he were the prime contractor. The prime contractor shall not be accountable for the failure of his subcontractors to meet such goals or to make every good faith effort to meet them. However, the prime contractor shall give notice to the Area Coordinator of the Office of Federal Contract Compliance of the Department of Labor of any refusal or failure of any subcontractor to fulfill his obligations under this Order. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth in paragraph 1 above, provided, however, that participation by the bidder in multi-employer programs approved by the Office of Federal Contract Compliance will be accepted as satisfying the requirements of this Notice in lieu of submission of goals with respect to the trades covered by such multi-employer program. In the event that such multi-employer program is applicable, the bidder need not set forth goals in paragraph 2 above for the trades covered by the program.

5. For the purpose of this Notice, the term minority means Negro, Oriental, American Indian and Spanish Surnamed American. Spanish Surnamed American includes all persons of Mexican, Puerto Rican, Cuban or Spanish origin or ancestry.

6. The purpose of the contractor's commitment to specific goals as to minority manpower utilization is to meet his affirmative action obligations under the equal opportunity clause of the contract. This commitment is not intended and shall not be used to discriminate against any qualified applicant or employee. Whenever it comes to the bidder's attention that the goals are being used in a discriminatory manner, he must report it to the Area Coordinator of the Office of Federal Contract Compliance of the U.S. Department of Labor in order that appropriate sanction proceedings may be instituted.

7. Nothing contained in this Notice shall relieve the contractor from compliance with the provisions of Executive Order 11246 and the Equal Opportunity Clause of the contract with respect to matters not covered in this Notice, such as equal opportunity in employment in trades not specified in this Notice.

8. The bidder agrees to keep such records and to file such reports relating to the provisions of this Order as shall be required by the contracting or administering agency.

Mr. JAVITS. Mr. President, I am about to suggest the absence of a quorum, only for the purposes of notifying Senators again that we are engaged in this debate so that an ample opportunity may be afforded, if any is further required, to permit them to participate.

I shall then, if the Chair will recog-

nize me, proceed to discuss the matter myself, for a very few minutes.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PEARSON in the chair). Without objection, it is so ordered.

Mr. JAVITS. Mr. President, this is a very serious question which we have before the Senate, because it not only involves a very profound question of policy on the part of the United States in the field of discrimination in employment opportunities, which would be serious enough without anything else, but it involves a very serious question of conflict between two Government agencies, and yet a third serious question of constitutional law.

As if any more questions were needed, Mr. President, it goes again to the issue which we encountered in the foreign aid bill, and which we encountered yesterday with the HEW bill. That is the extent to which the Appropriations Committee should legislate for all committees.

Mr. President, there is absolutely no question that this is legislation on an appropriation bill. So that Senators may be advised—and I would deeply appreciate it if the attaches would advise them—as I see the procedure, it will be as follows:

In due course I, or some other Senator, will make a point of order that this is legislation on an appropriation bill. When such a point of order is made, it is my understanding that before the Chair rules, the manager of the bill will raise the issue of germaneness; that is, that it is germane to the bill for various other reasons, which are supposedly contained in the bill.

That question, as I understand it, is not decided by the Chair, but by the Senate. The question will then be put to the Senate in the following terms: "Is it the sense of the Senate that the amendment incorporated in section 904 is germane to this measure?"

A vote of yea will sustain the germaneness. Therefore, it will remain part of the bill unless otherwise stricken by an amendment or a motion to strike.

A vote of nay will affirm that it is not germane, and it will therefore be stricken from the bill because it does not fall under the rules.

It is therefore, because of this rather summary situation, Mr. President, that the debate on this particular proposition must be made before that point is reached, as once the debate has been had, no further debate is possible.

Mr. President, the Philadelphia plan, or the revised Philadelphia plan that has been the subject of considerable debate and discussion by me and others, I really think becomes in an interesting way the lesser rather than the greater part of the debate.

It has been quite thoroughly explored in many ways. The greater part of the debate, I think, now occurs on the unbelievable scope of this particular

amendment insofar as its effect on the law is concerned, and even in its effect upon the administrative hierarchy of the U.S. Government and the absolute power—the power to even defy courts—which is vested in the Comptroller General of the United States by this provision. And, in a sense, it is made even more unwise, and perhaps even unfair, because it is incorporated in a supplemental appropriation bill.

Mr. President, we all know that there is no line-item veto in the President. He has to take it or leave it. And it is very unusual for the President to veto an appropriation bill. So, there is an additional factor added, notwithstanding the fact that this is permanent legislation. I beg the Senate to understand that this is permanent law. It is as stringent as I have described, and incidentally this is not my opinion, but it is the opinion of the Attorney General of the United States, quite apart from the Philadelphia plan. I will read the opinion as to the effect on many things, not just on the Philadelphia plan, but also on his Department and on the Comptroller General. If we put this into effect and make it law, the Comptroller General is hereby given authority to defy the courts.

I have pointed out that it is permanent law. It reads as follows, page 15, lines 10 to 12:

No part of the funds appropriated or otherwise made available by this or any other Act...

Mr. President, that is pretty broad stuff. And, in my judgment, it raises grave questions as to whether it is retrospective or prospective or both.

Mr. President, I do not see how anyone will decide that except the Comptroller General who, by virtue of this paragraph, is not bound by the courts. It provides: "which the Comptroller General of the United States holds."

That is the key word, "to be in contravention of any Federal statute."

So he holds it to be in contravention of any Federal statute, and he, in fact, controls the purse strings of the United States. Then he, the top man in this country—and perhaps the 7 days in May have arrived—of all people is the real ruler of the country, the Comptroller General of the United States.

It is almost inconceivable that a measure of such size and scope should come to us in a supplemental appropriation bill as permanent legislation with the breadth and the impact that this has. And what is perhaps a little more inconceivable—and I think the Senator from Hawaii (Mr. FONG) was right about it—is that it should come at this time in the session when one look at the Chamber, which ought to be packed and ringing with debate whether we are right or wrong, tells us the whole story about the seriousness of what is proposed.

It is apparent to the onlooker that there is a lack of interest in the matter.

I pointed out that this was not my opinion, but that it was the opinion of the Attorney General of the United States.

The Attorney General wrote to the

minority leader today. This has just burst upon us. As the Senator from Hawaii said, it just came up yesterday in an effort to kill the Philadelphia plan, which is the real purpose of the provision—we all know that. But they would be killing a lot of other things with the same shot.

This would be Napoleon Bonaparte with grapeshot clearing the whole street and not just the Philadelphia plan.

Mr. President, I ask unanimous consent that the letter from the Attorney General be printed at this point in the RECORD. I will be reading from it, and I do not want people to say that I read only certain parts of it.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., December 18, 1969.
Hon. HUGH SCOTT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCOTT: I am writing to express my concern with respect to the provisions of Section 904 of H.R. 15209, the Supplemental Appropriation Bill, 1970, presently under consideration in the Senate.

Section 904 provides:

"In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute."

The Comptroller General, under present law is authorized to settle and adjust all claims by or against the Government of the United States, 31 U.S.C. 71, and to settle the accounts of accountable officers of the Government, 31 U.S.C. 72, 74. In the performance of this function he has, historically, been required to determine the legality of expenditures and the availability of appropriations to make such expenditures.

His determinations of law are not, however, binding on affected private parties or the courts, *Miguel v. McCarr*, 291 U.S. 442, 454-55 (1934).

The provisions of Section 904, if I understand them correctly, would alter present law in at least two respects. First, they would prohibit, or could be construed to prohibit, any Federal payment to be made on any contract entered into or containing any provision in violation of Federal law. The prohibition would operate without regard to the nature or gravity of the violation, responsibility of the contractor, or any other equitable consideration. This would impose a harsher rule on those who contract with the Government than at present. Now, not every illegality or irregularity invalidates a contract, and even where the contract itself may be invalidated, a contractor in appropriate circumstances will be entitled to be paid the value of his services. *New York Mail and Newspaper Transportation Co. v. United States*, 154 F. Supp. 271 (Ct. Cl. 1957), cert. denied, 355 U.S. 904 (1957); *Crocker v. United States*, 240 U.S. 74 (1916). Furthermore, this harsh rule would be applied not only to those who contract directly with the Federal Government, but to those who deal with Federal grantees.

Section 904 alters existing law in another significant respect. It provides that the Comptroller General's determination as to the legality of any contract is binding whether or not such determination is later upheld by the courts. As I read the Section it would be fruitless for a contractor to sue in the

Court of Claims on a contract held by the Comptroller General to be illegal, since even if the court agreed with the plaintiff's view of the law, this Section would prevent payment being made to satisfy a judgment in his favor.

I am, of course, not indifferent to the effect which this provision would have on the functions of this Department in advising the President and the officers of the Executive Branch on questions of law arising in the course of their duties, 28 U.S.C. 511, 512. In executing the laws, the Executive Branch must of necessity interpret them. Such interpretations may, on occasion, conflict with the view held by the Congress; but in such case our system provides as ready correctives new legislation or resort to the courts. Because of the limited time available, I have limited myself to what seem to me to be these serious practical objections. I am bound to say, however, that the authority to be vested in the Comptroller General under Section 904 would, in my view, so disturb the existing allocation of power and responsibility among the several branches of the Federal Government as to raise serious questions as to its constitutionality.

I therefore urge that Section 904 be deleted from the bill.

Sincerely,

JOHN M. MITCHELL,
Attorney General.

Mr. JAVITS. Mr. President, the Attorney General says.

The provisions of Section 904, if I understand them correctly, would alter present law in at least two respects. First, they would prohibit, or could be construed to prohibit, any Federal payment to be made on any contract entered into or containing any provision in violation of Federal law. The prohibition would operate without regard to the nature or gravity of the violation, responsibility of the contractor, or any other equitable consideration. This would impose a harsher rule on those who contract with the Government than at present. Now, not every illegality or irregularity invalidates a contract, and even where the contract itself may be invalidated, a contractor in appropriate circumstances will be entitled to be paid the value of his services.

The Attorney General then cites some cases and a U.S. Supreme Court case.

Mr. President, I continue to read:

Furthermore, this harsh rule would be applied not only to those who contract directly with the Federal Government, but to those who deal with Federal grantees.

Section 904 alters existing law in another significant respect. It provides that the Comptroller General's determination as to the legality of any contract is binding whether or not such determination is later upheld by the courts. As I read the Section it would be fruitless for a contractor to sue in the Court of Claims on a contract held by the Comptroller General to be illegal, since even if the court agreed with the plaintiff's view of the law, this Section would prevent payment being made to satisfy a judgment in his favor.

Mind you, Mr. President, a supplemental appropriations bill in the last days of the session, a measure from the Appropriations Committee contains permanent law giving this kind of power.

Mr. PEARSON. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PEARSON. Mr. President, would the letter of the Attorney General or the opinion of the Attorney General offer some foundation for the Senator's assertion of the broad concept that under

the language of the bill the Comptroller General would be the final and last word, even above the opinion of the court? I do not really think that is the meaning of the language.

It says there that the Comptroller General must make a judgment upon the payment of funds as to whether the contracts are illegal in reference to a given statute and that statute of law as it is interpreted by the court.

So he looks not at just the statute that he measures it by, but he also looks at it as it is interpreted by the opinion of any court in the land.

Mr. JAVITS. Mr. President, I wish I could agree with the Senator. However, let us remember that the jurisdiction of the courts is within the Judiciary Act of 1789, which establishes the jurisdiction of the lower Federal courts.

There is only one constitutional court, and that is the Supreme Court of the United States. Therefore, we have passed laws time and again which deprive the courts of jurisdiction and make a decision on an administrative problem final.

With the fundamental equity power of the court with relation to some kind of crookedness or fraud, or something of that sort, it seems to me that with the absolute unqualified statement here contained, "which the Comptroller General holds" and that is the key word, "to be in contravention of any Federal statute", I do not see that a court would have jurisdiction to challenge it. He could say to 16 courts who seek to mandate him to do something, "Congress told me that if I hold it, that is it."

It seems to me that that is a power which certainly one Senator could prevent. I should think that I would be violating my oath of office if I did not fight this tooth and nail, and I hope that a majority of the Senate would feel the same way before surrendering such power to one official of the United States, the Comptroller General, dignified and important and consequential as he may be.

As I have said, I am buttressed in my feeling that this is not qualified by the fact that the Attorney General feels the same way. Also, the Attorney General says, as his third reason for grave concern in opposition to this section:

I am bound to say, however, that the authority to be vested in the Comptroller General under Section 904 would, in my view, so disturb the existing allocation of power and responsibility among the several branches of the Federal Government as to raise serious questions as to its constitutionality.

He then points out, and I should like to read it to the Senate, the power of his own office:

I am, of course, not indifferent to the effect which this provision would have on the functions of this Department in advising the President and the officers of the Executive Branch on questions of law arising in the course of their duties, 28 U.S.C. 511, 512. In executing the laws, the Executive Branch must of necessity interpret them. Such interpretations may, on occasion, conflict with the view held by the Congress; but in such case our system provides as ready correctives new legislation or resort to the courts. Because of the limited time available, I have limited myself to what seems to me to be these serious practical objections.

Then he goes on with the phrase I read before:

I am bound to say, however, that the authority to be vested in the Comptroller General under Section 904 would, in my view, so disturb the existing allocation of power and responsibility among the several branches of the Federal Government as to raise serious questions as to its constitutionality.

Mr. PEARSON. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PEARSON. Without regard to whether the legal opinion of the Comptroller General is correct or whether the opinion of the Attorney General of the United States is correct, there does seem to be a dispute between the two. Is that accurate?

Mr. JAVITS. That is correct.

Mr. PEARSON. And that constitutes a conflict, aside from the very important issue of civil rights, a conflict of opinion between the executive branch of the Government and the congressional branch of the Government of the United States.

Mr. JAVITS. I would not quite go that far, for this reason: It constitutes a conflict between the Attorney General and the Comptroller General. I would not say Congress, because Congress is going to have a chance to speak on this right now.

The Comptroller General is an arm of Congress, but this bill submits the issue to Congress. Section 904 seizes us of the question. It is we now, not the Comptroller General, who are going to pit ourselves against the Attorney General. That is a very important point. We are going to decide today, in the Senate, and in the other body, on the conference report, if this carries through conference, that we are going to take on this issue and we will have decided.

The men who drew section 904 were no fools, because giving the Comptroller General this absolute authority is the way Congress can decide the issue. If the President signs this bill, then the Comptroller General becomes our agent, not generally in fiscal matters, but he becomes our agent to kill the Philadelphia plan or to kill anything else he does not like—we give him that power—when he holds that it is in contravention to a Federal statute, no matter what the Attorney General holds and, I think, no matter what the courts hold. We give him that power.

So you have Congress; you do not have just the Attorney General. It is Congress. We are now seized of it, and we are going to act, yea or nay, in a relatively short time.

Mr. PEARSON. I ask the Senator from New York if the same argument cannot be made on the other side. If the Comptroller General, an arm of Congress, makes a judgment determination that the payment of funds is illegal, in his opinion, but at any time the Attorney General of the United States, an officer of the executive branch of Government, determines otherwise, then an arm of Congress is just negated; his opinion is of no use whatever.

Mr. JAVITS. Not at all, because it is

very well known and it is hornbook law that whatever the Attorney General does, he is only the legal adviser, the lawyer. His client is the United States, and the United States can be sued, at least in certain cases.

Mr. PEARSON. The executive department of the United States.

Mr. JAVITS. Exactly. The executive department of the United States can be sued in court in most cases, and the decisions of the courts are binding.

Again, it must be remembered that even in that, we can nullify what the courts do if we do not appropriate the money to pay a judgment. So we still have the ultimate residual power as a coordinate branch.

Mr. PEARSON. Which we have exercised by establishing an agency, the Comptroller General's office, an arm of Congress, giving him certain powers, and among those is the determination of whether the pay-out of funds is in fact proper and legal in very respect.

Mr. JAVITS. Exactly. But here we give him a mandate of absolute power.

In other words, if we are going to depend upon the normal power of the Comptroller General to be an arm of Congress and deal with questions of legality and illegality, rather a twilight zone of a governmental authority—who prevails, the Attorney General or the Comptroller General?—then there is nothing I could do about it, nothing I would want to do about it, because this is one of the normal struggles within the executive and congressional departments with which we are all familiar. Somehow or other, they resolve themselves.

The fact is that, notwithstanding the Comptroller General's ruling so far, under the Philadelphia plan they have already made 14 contracts with contractors who are expending a good deal of money, who I assume are over 21, and who feel that, somehow or other, they will get paid some way and that the views of these respective agencies will be reconciled. But we are not letting it alone. If we were letting it alone, there is nothing I could do about it or anybody else could do about it.

We have had these crises in our country before. But we are acting now. We are not just leaving it to the Comptroller General. We are saying affirmatively to the Comptroller General: "We now tell you that your opinion is to be paramount. We are deciding that question; and if you hold—only you hold—that it is in contravention of a Federal statute, that is supreme; you don't pay."

Mr. PEARSON. Mr. President, will the Senator yield?

Mr. JAVITS. Let me finish my thought.

That is an extra, new, added fortification of the authority which under this constitutional system would really pit Congress—not the officials, but Congress—against the executive branch. Aside from the fact that I think it is completely unwise in terms of this plan, we are now arguing only the question of governmental organization and governmental power. Should Congress place this tremendous authority in this or any other act? That is what this section re-

lates to. It has been pointed out by the Senator from Hawaii (Mr. Fong) that this does not apply only to the Philadelphia plan. It applies to a whole series of other matters which are completely and directly affected, and I will go over those again, because I think it is very important.

Should Congress give this kind of grant of absolute authority, overriding everybody's else's authority, to the Comptroller General? I think it is extremely unwise, and I argue very strong against it.

Mr. PEARSON. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PEARSON. The question is not only whether or not we are going to give this enormous power to the Comptroller General to control everything. The question is twofold: Do we give this enormous power to the Attorney General of the United States, an officer of the executive department, to exercise it not only within the executive department but also the congressional branch?

Mr. JAVITS. No. I cannot go along with that, because the Attorney General has no power comparable to what we would be giving the Comptroller General if we pass this. The Attorney General is a lawyer—

Mr. PEARSON. The Attorney General would have that power if we defeated this.

Mr. JAVITS. He would not. The Attorney General has only the authority to advise the agencies of the Federal Government. But any agency is amenable to suit in the Court of Claims. Many are amenable to suits in the district courts and various other ways; whereas, what we are doing here, I have pointed out, by the ambit of this provision, is to immunize a particular official for any kind of supervisory judgment except our own, if we withdraw it.

Mr. PEARSON. If the Senator will yield one more time I will not interrupt him again. However, the Senator did comment that this was a norm. If the Senator will refer to page 19 of the report he will find it is stated:

The Comptroller General has exercised the delegated congressional power over the obligation and expenditure of appropriated funds for almost 50 years without serious challenge from the Attorney General of the United States or any other officer of the Executive Branch.

This is something quite new; this is something quite important. I am sorry this came up in relation to a civil rights matter. I think that clouds the matter and makes the debate we are having today a rather technical one, a procedural one, and not worthy really of the attention we are giving it; but our laws and not procedures are the foundation of the rights of the parties.

Mr. JAVITS. I think the Senator is right about procedures. The procedure we established by this amendment is such as to give him a grant of power which, if he had it, he would not exercise, but we give it to him and practically order him to exercise it, giving him complete autonomy in everything else.

I would like to point out the effects of such authority. I shall read from a

memorandum which has been prepared on this subject.

EFFECTS OF THE RIDER TO THE SUPPLEMENTAL APPROPRIATIONS ACT

1. The rider would transfer effective administrative control over wage determinations under the Davis-Bacon Act, the Walsh-Healey Public Contracts Act and the Service Contract Act to the Comptroller General. If he determined that a determination was improperly made, no funds could be used to finance the contract that incorporated that wage determination.

2. The rider would oust the jurisdiction of Contract Boards of Appeal in many instances. Regardless of decisions of a Board in favor of the contractor, the agency would not be able to make payment if the Comptroller General held any term of the agreement in violation of Federal law.

3. The rider would oust the jurisdiction of the Court of Claims. The Comptroller General has never considered himself bound by the judgment of the Court of Claims. If the Court of Claims entered a judgment for a contractor, funds would not be available to pay that judgment if the Comptroller General did not agree with the decision of the court on the legality of the contract.

4. All agency rules and regulations on the implementation of Title VI of the Civil Rights Act could be enforced only if the Comptroller General agreed on their legality—regardless of decisions of the courts.

In short, all that really amounts to is that by adopting this rider you so lock in this absolute authority which, I may say, the Comptroller may have or may not have. With respect to the statement that this has been done for almost 50 years without serious challenge, naturally one might say, "This has been a system which worked." The system has worked and I want it to continue to work; but I say by this rider they are interrupting the rhythm of the system and the way it works, and you are throwing a new factor in which will very much bedevil this system. Just because you are shooting at one figure on a broad street you are mowing down everything on the street.

Mr. PEARSON. The Senator makes the point that the wording of the bill, particularly the last line, refers to "any contract or agreement" which the Comptroller General of the United States holds to be in contravention of any Federal statute. He makes the argument that the opinion of the Comptroller General in relation to a statute gives him such enormous power he would not be subject to a decision or the judgment of the court.

I take it that it is because of the word "statute." The Senator does not see it in that light. I wonder if the Senator would have objection if we changed "Federal statute" to "Federal law," which would be the statute properly interpreted by all courts having jurisdiction.

Mr. JAVITS. As long as you give the Comptroller General the absolute power, and if you change Federal statute to Federal law you would be giving him more power—I am not aware now, standing on my feet, how the courts define the phrase "Federal law." However, all you would be doing would be expanding it beyond the statute to whatever determination is included in Federal law, whether it is a decision, or anything else.

I have dealt with the generic question or power, which is a peripheral

question, but very important from the blunderbuss way in which it is drawn, and its universal application now and in the future will make it permanent law in the appropriation bill just because the idea is to nullify the Philadelphia plan. I would much rather that it would say the Philadelphia plan is a nullity. Then, if we cannot present the stronger case we lose, or if we do present the stronger case we win. However, I wish to address myself next to do what has been done here; the erection of this enormous piece of lethal machinery to knock off the Philadelphia plan.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. JAVITS. I shall yield to the Senator from Nebraska who wishes to argue this phase. I will argue the Philadelphia plan, its merits and whether it is constitutional, but before that I thought it proper at the threshold to question why this 155 millimeter howitzer is used to knock off a small target, the Philadelphia plan. I am sure we will find some other way to do what needs to be done. The Nation is not going to sink if the Philadelphia plan is knocked out. But this makes an enormous piece of law to deal with a relatively reasonable question upon which men can differ. The Attorney General and the Comptroller General differ on it.

Before I yield, I wish to say this is one case where the President came out four-square. He is backing the Attorney General and he wants the Philadelphia plan to stand, and he made that unequivocally clear today. I did want to say that, since it is very important.

Mr. PEARSON. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PEARSON. I have raised the questions which I have raised, not in relation to the Philadelphia plan; I think there are many issues here. The conflict of different branches of Government is a fundamental issue. I do not want my comments to indicate any lack of enthusiasm for any plan, whether it is the Philadelphia plan or not.

Mr. JAVITS. I thank the Senator. I knew that to be so.

Mr. HRUSKA. Mr. President, it is with some interest that I followed the colloquy being conducted between Senator JAVITS and Senator PEARSON. There is some question raised as to the efficacy of this amendment, section 904, and its purpose. It has been referred to by Senator JAVITS as a blunderbuss destroying several laws and practices when the real target is a single program. The question is raised, "Why use a howitzer to zero in on such a relatively small, although highly important, Philadelphia plan?"

Mr. President, I submit it is not only the Philadelphia plan that is involved. We are faced with a situation of much greater scope and a question of much greater urgency. Here we confront a situation in which the Comptroller General has undertaken to say that the expenditure of public money pursuant to any contract entered into under the Philadelphia plan is illegal and shall not be paid out; and we have a member of the executive, the Attorney General, saying

it is legal and the Department of Labor should go ahead with it.

We face squarely the question of deciding whether the actions of the Secretary of Labor, based on the advice of the Attorney General will prevail, or whether it will be the Comptroller General's opinion which will prevail. I submit that the Comptroller must prevail.

It was said a long time ago in debate on passage of the Budget and Accounting Act of 1921:

If he, the Comptroller, is allowed to have his decisions modified or changed by the will of an executive, then we might as well abolish the office.

Where will the original decision be made with reference to whether congressional intent and congressional provisions will mean one thing or mean another? Congress says, "That power will reside in the Comptroller General, who is an arm of the Congress, not in the Attorney General, not in any appointee of the President, not in any other Secretary of the Cabinet, but someone outside the executive department." That is very well written into the law. Those who see in section 904 a major change in our constitutional form of government, are not taking into consideration existing law. Nor do they look at the exact language of section 904, which states in pertinent part:

In view of and in confirmation of the authority vested in the Comptroller General of the United States by the Budget and Accounting Act of 1921 as amended, . . .

Consider the language contained in section 904, and the language contained in title 31 of the United States Code, section 44, which I cite in pertinent part:

Balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government.

Then we turn to section 74 of the same title which starts out:

Balances certified by the GAO upon the settlement of public accounts shall be final and conclusive upon the executive branch . . .

This is the law. All that section 904 is designed to do is reaffirm congressional support for the authority already invested in the Comptroller General under this act when his power over appropriations and expenditures is challenged.

The Federal statute is contravened by the contract agreement in question. That is what is involved in this matter. In practical terms, the questions is whether Congress will lose its appropriating power by appropriating \$2 million, \$19 million, \$21 million, \$69 million, or even \$1 billion, and send it downtown and, regardless of the opinion of the Comptroller General, regardless of what the plain legislative intent and the plain language of the law, if the Secretary decides to reallocate an appropriation contrary to congressional intent, this action will totally nullify our power to appropriate.

This same issue was before the Congress in the early part of this century. In 1921, the Budget and Accounting Act was passed. The post of Comptroller General of the Congress of the United States was created. As was wisely observed by former President Cleveland:

If the Comptroller General does not agree with what I believe the law to be, and if I do not want to agree with what I believe the law to be in regard to this appropriation, I can always get a new Comptroller General.

As a result the Comptroller was made independent of the executive.

It was a very handy arrangement for the President and the Executive Department to have the Comptroller in their power but not for the body that holds the appropriating processes, pursuant to the Constitution. That is the real issue here.

The purpose of section 904 is to reaffirm our intent and say it is still the law of the land. That is its purpose. I hope that the Congress will affirm it and will approve it.

Mr. JAVITS. Mr. President, I think the Senator has made, very eloquently, the best argument for striking the provision, if we take the Comptroller General to have the power he says he has. I am a lawyer, and I never advise my clients to confirm something they have. Why rock the boat? Maybe Congress will turn it down. Does that mean the Comptroller General will lose the power the Senator claims he has? In addition, it is said that this is the way in which the Congress has been run. On the contrary, since the days of Attorney General Moody in 1921, when he ruled on this very question that the Senator is referring to, the legal opinion held at that time, "I am unable to agree to the proposition that the act of 1894," which is the predecessor of the one the Senator is referring to, "establishes a rule which is universal without exception under all circumstances," and so forth. It is quite a comprehensive opinion.

The fact is, at the very best, this question has been in the twilight zone for both. They have inevitably gotten together to settle it. That is why I argue against the provision now, because what we are trying to do by this provision in the supplemental bill, in the closing days of the session, without hearings, or evidence, which is extrapolated because somebody wants to kill of the Philadelphia plan, we are making a broad scale effort to use the Senator's word "confirmation" of the absolute authority in the Comptroller General. I just do not think that is a provident way to legislate. I will deal with the substantive question of the Philadelphia plan later.

When the Senator speaks about the fact that we would be surrendering—whatever that might mean—our authority over appropriations, we must remember that in addition to the Comptroller General, there are the courts, and the fact that the President of the United States does not have to spend a single dollar to appropriate. Let us remember that. He does not have to spend a single dollar we appropriate. He can impound it and he has done that time and time again. That is pretty tough control. The only thing that can be done about it is to impeach him or defeat him at the next election. But that is the way our Government works. We have never, in this Government, sought to give absolute power, as is given in this amendment. We have always been willing to leave things a little slack.

Mr. HRUSKA. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I do not yield yet.

I do not think that this is provident legislation in terms of a Congress of the United States, because what the Senator is saying to the Comptroller General is, "Now we can confirm that you are right and the other fellow is wrong, and what you hold is the end of the matter, no matter what any court says or anyone else—and that is it."

I just do not think that that is the way in which relative balancing of the powers and authorities of the three branches of government can be run wisely.

Let that Comptroller General be a little worried about his authority. Let that Attorney General be a little worried about his authority, too. We have always felt that everyone should be amenable to the courts. I cannot say it is universal because all of a sudden and quickly, I have been preparing for this argument while we have been having quorum calls. That is as much notice as we have had. No matter how vigilant we are, this thing burst upon the world yesterday.

I believe that the argument of the Senator from Hawaii (Mr. FONG) is the best of any. Why bring this thing into the supplemental appropriation bill in the last days of a session even if you are right and I am wrong. But I am a pretty fair lawyer and so are many others here. There is at least some serious question here as to whether we are giving or are vesting our Comptroller General with power—absolute power, which could be disruptive to the Government. I think it is improvident, whatever there may be in the Philadelphia plan.

I think this is really the very best argument one can make on this provision. Often one has to vividly bring before his colleagues the implications of something. I really doubt that the men who wrote this provision intended that it should be as broad, sweeping, and all-encompassing as it is; but it is.

We had a situation very much like it the other day, on the Defense appropriation bill, when we were considering a provision, and Senators were arguing, "Well, do not worry about what it says. The Department will understand when they read the legislative history." This was not satisfactory to many of us and we said, "If you mean something, say it."

That is the situation with respect to this matter. The fact is that this provision, by its terms, as far as we can read the terms, vests considerable authority in one official of the Congress, without which authority he has lived very satisfactorily for 50 years.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PASTORE. I merely want to say that there is a little more to it than what the Senator has said. Perhaps he said it when I was not present in the Chamber. I am one of the Senators who opposed this amendment in the committee, first of all, for the reason given by the distinguished Senator from Hawaii. We are dealing with a very sensi-

tive issue. It is not a legalistic issue. It involves a great deal more than that, and we understand it does.

There is no question at all about the fact that the Comptroller General is the arm of the Congress and responsible to the Congress and that he speaks for the Congress. Under the law of 1921 he has certain definite responsibilities, and we want to protect that law as much as we can. But we have to look at this issue, intricate as it is, with a little more depth than I am afraid we can do in one afternoon or several days. It needs to be gone into very thoroughly.

What we are confronted with is the fact that this Nation suffers with a difficult situation, a very distressing one, which erupted in Philadelphia not too long ago. Because the administration has the responsibility of doing something about it before it erupts all over the country, it initiated a plan it thought would solve the problem for the time being.

It is true that, under the civil rights law, the quota system could not be used, for the simple reason that a quota was barred. So they used the approach of a goal—unless we construe it to be a quota. Here is where the Attorney General and the Comptroller General disagree, and I think reasonable men can disagree.

The fact remains that the administration, in trying to bring about a solution of this tremendous problem, initiated the so-called Philadelphia plan.

In the process of arguing as to who should have jurisdiction, whether it should be the Comptroller General or the Attorney General, we are disrupting that program, which I think is essential for the stabilization of the situation, which has become a quite irritable one and a serious one in the Nation.

I quite agree with the Senator from New York. I believe the action of the committee—and I said so at the time—was a little too precipitate. This matter was pending before the Judiciary Committee, and nothing happened. It was called to my attention only 2 or 3 days ago. I have mixed feelings about it. I certainly want the Comptroller General to have the authority he has. I certainly do not want to deny the Congress any of the responsibilities it must have under constitutional law. At the same time we are confronted with the problem of equal opportunity of employment. That is a very important question.

Congress initiated the Davis-Bacon Act to equalize wages throughout the country because of differentials in certain areas of the country. We did it in the public interest. Perhaps in the public interest we will need not only the Philadelphia plan, but the New York plan, the Boston plan, and we may even need the Miami Beach plan. I do not know. I really do not know. But the fact remains that what we are doing today, in essence, is rejecting the administration plan to meet a very tragic situation that erupted in Philadelphia. I think we ought not to forget that.

There is nothing in the language before us that mentions the word "Philadelphia," but, by indirection, it throws out the Philadelphia plan. This question ought to be gone into in quite some

depth. It has been pending for 2 or 3 months, or perhaps 3 or 4 months, whatever the case may be. Certainly there have been only limited hearings on it. All I know is that a lawyer from the Comptroller General's office came and said, "This is the interpretation I give it." Attorney General Mitchell gave it another interpretation.

Here we are caught in between. We are caught between disagreement of two agencies as to whether or not the law is being properly construed.

In the process, what are we doing? For all practical purposes, we are rejecting the Philadelphia plan. I say to the Senate this afternoon, this will not be the end of it. Certainly, this will not be the end of it. We had better proceed with fairness, caution, and coolness.

I think the better part of judgment would be to wait until we came back in January, go into this question in detail and depth, and clear up the question of who is the proper authority.

Mr. JAVITS. Mr. President, I love my colleague from Rhode Island. If I needed any confirmation of it, it has been illustrated now. What he says makes sense, and I am grateful to him for having given me a minute's rest.

Mr. PASTORE. That is why I did it.

Mr. JAVITS. And for the intercession of his very sage and very wise comments.

May I say to him in fairness that there have been a couple of days of hearings. The Senator from North Carolina (Mr. ERVIN) had hearings in the Subcommittee on Separation of Powers. As a matter of fact, I testified expressly on the Philadelphia plan. Without any question, that is the place where this matter should be gone into, deliberated, dealt with, and reported in legislation.

Mr. PASTORE. Can the Senator tell me why the committee did not reach a conclusion, after holding hearings?

Mr. JAVITS. I think that is the way it should be done. I do not think the Senator held enough hearings to his satisfaction, or perhaps the committee has been too busy, but hearings were held. I myself was a witness. There were quite a few other witnesses, from industry, and elsewhere. That is the proper forum in which that particular question should be decided. It is a legal question.

Mr. PASTORE. Senators know that today, on the very principle involved here, we overrode the manager of the foreign aid appropriation bill because we said the Appropriations Committee had no business getting itself mixed up in the changing of the basic law. Did we not say that in essence?

Mr. JAVITS. Exactly.

Mr. PASTORE. And that point was sustained by the Senate. Now we are doing just the opposite.

Mr. JAVITS. I am very grateful to my colleague from Rhode Island.

Mr. President, to accommodate the Senator from Colorado—I have only completed half of my argument on the ambit of the provisions, rather than the merits of the Philadelphia plan and its constitutionality—I yield the floor to allow the Senator from Colorado, if the Chair will recognize him, to address himself to this subject.

Mr. HRUSKA. Mr. President, will the Senator yield.

Mr. JAVITS. I yield.

Mr. HRUSKA. Reference was made by the Senator from New York to Attorney General Moody's opinion. He referred to it as an opinion rendered in 1921. More accurately, it is the written memorandum by Attorney General Moody in 1904, under the old act. That is the year and the memorandum to which reference was made. I think the RECORD ought to be clear.

Mr. JAVITS. Let us put it in the RECORD.

Mr. HRUSKA. What the law was in 1904 was radically changed by the Budget and Accounting Act of 1921. If the Senator wants to check into it, I have the memorandum before me.

Mr. JAVITS. I will put the whole thing in the RECORD. I think the Senator is absolutely right. As I explained to the Senator—and I think it is one of the biggest arguments in this debate—and as the Senator from Rhode Island (Mr. PASTORE) has said, those of us who were not apprised of what was going on literally had to stand on our feet and prepare. The Senator knows I am not underdiligent when it comes to work, but it was physically impossible to do what should have been done in this case.

Mr. HRUSKA. I am glad to have the Senator lead into that question, because I should like to comment on it very briefly. I shall expand further later.

Those questions were raised in the Appropriation Committee. "Why right now?" and "Why in an appropriation bill?"

The fact is that not only the Philadelphia plan is involved. A similar series of contracts is being negotiated, and very likely will soon be in effect, in Boston and in some seven, eight, or nine additional cities.

Mr. President, that presents quite a problem. Being aware of that problem, and having the question before us as to where this authority resides, if the Congress sits here doing nothing, and those contracts are entered into, then the question will be raised, when the time comes to debate the legality of those plans, "Did not the Congress acquiesce in a practice along that line? Is the Government not estopped from objecting?" The Congress knew what was going on and yet they raised no objection. Here these contractors are, putting bricks and stone together, and signing rate contracts and everything.

In view of these considerations, I think that this bill is a legitimate vehicle for saying this is the time and place to confront this issue.

With that, I join the Senator from New York in saying the Senator from Colorado ought to be allowed to speak and get back to his conference on another appropriation bill.

Mr. JAVITS. I have one myself.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the able Senator from Colorado be permitted to yield for a unanimous-consent request and a bit of legislative action at the re-

quest of the Senator from California (Mr. CRANSTON) without losing his right to floor. It will only take a minute or two.

Mr. ALLOTT. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

VETERANS EDUCATIONAL AMENDMENTS OF 1969

Mr. CRANSTON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 11959.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives, announcing it had agreed to the amendments of the Senate to the bill (H.R. 11959) to amend chapters 31, 34, and 35 of title 38, United States Code, in order to increase the rates of vocational rehabilitation, educational assistance, and special training allowance paid to eligible veterans and persons under such chapters, with amendments, in which it requested the concurrence of the Senate.

Mr. YARBOROUGH. Mr. President, on October 23, 1969, the Senate passed its version of H.R. 11959, the Veterans Education and Training Assistance Amendments Act of 1969, and sent it to the House for action. For nearly 2 months this important bill which directly affects the lives of thousands of our veterans has been in the House without action being taken on it. Now as this session of Congress is in its final hours, the House has passed a bill which does not include many of the important provisions of the Senate version of this bill. Specifically, this bill which the House passed today does not include the important 46-percent increase in education and training allowances for veterans participating in the cold war GI bill education and training programs. This 46-percent increase was proposed by me in my bill, S. 338. The purpose for this increase was to bring cold war GI bill benefits in line with those paid to veterans under the Korean GI bill. The Senate adopted S. 338 and made it title I of H.R. 11959. This bill has received the enthusiastic support of every major veterans organization in America as well as countless numbers of veterans who are using these important benefits.

I firmly believe that this increase of 46 percent in allowances is necessary to increase participation in GI bill programs and to assure the veterans of Vietnam and the cold war era to full economic equality with veterans of the Korean conflict.

In addition to these important increases in education and training allowances, the Senate version of H.R. 11959 also contained the following new programs:

First, a new farm cooperative program, similar to the one provided for under the Korean conflict GI bill which was originally introduced by me as S. 1998.

Second, a new flight program which would authorize low interest loans of up

to \$1,000 to veterans wishing to obtain a private pilot's license;

Third, a new education and training program designed to prepare high school and elementary school dropouts for advanced training and higher education; and

Fourth, a new veterans outreach program designed to advise veterans of their rights and assist them in obtaining them.

These programs which were incorporated into the Senate version of H.R. 11959 were the result of long and thoughtful study by the Subcommittee on Veterans Affairs under its distinguished chairman, Senator CRANSTON, and the full Labor and Public Welfare Committee. The subcommittee held hearing on these important measures on June 24, 25, 26, August 8, and August 12. The testimony presented at these hearings clearly demonstrated the need for these new programs. This bill obtained wide bipartisan support as evidenced by its approval by the Senate by a vote of 77 to 0.

The House, unfortunately, has not seen fit to recognize the need for the 46-percent increase and the new programs contained in the Senate version of H.R. 11959. Instead of accepting the Senate version of H.R. 11959, the House today passed a bill which is woefully inadequate to meet the needs of our veterans. More specifically the House bill: First, rejects the important 46-percent increase in education and training allowances and substitutes an approximate 30-percent increase. This would amount to only a \$5 increase over its 27-percent increase in the original House bill; second, excludes completely: the farm cooperative program, the new flight program, the new veterans outreach program, and the new prep program for educationally disadvantaged veterans.

I cannot see how the new House bill can be acceptable to the Senate or the veterans who are depending on Congress to enact this important legislation.

Therefore, I urge the Senate to reject the House version of H.R. 11959 and I call on the House to meet in conference with the Senate immediately so that an acceptable bill can be worked out before the end of this academic semester.

Mr. CRANSTON. I move that the Senate disagree to the amendments of the House to the amendments of the Senate, request a conference with the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. CRANSTON, Mr. YARBOROUGH, Mr. RANDOLPH, Mr. KENNEDY, Mr. MONDALE, Mr. HUGHES, Mr. SCHWEIKER, Mr. JAVITS, Mr. DOMINICK, Mr. SAXBE, and Mr. SMITH of Illinois, conferees on the part of the Senate.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 13111) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for

the fiscal year ending June 30, 1970, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. FLOOD, Mr. NATCHER, Mr. SMITH of Iowa, Mr. HULL, Mr. CASEY, Mr. MAHON, Mr. MICHEL, Mr. SHRIVER, Mrs. REID of Illinois, and Mr. Bow, were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PASSMAN, Mr. ROONEY of New York, Mrs. HANSEN of Washington, Mr. COHELAN, Mr. LONG of Maryland, Mr. McFALL, Mr. MAHON, Mr. SHRIVER, Mr. CONTE, Mrs. REID of Illinois, Mr. RIEGLE, and Mr. Bow were appointed managers on the part of the House at the conference.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the bill (H.R. 8449) to amend the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, and it was signed by the Acting President pro tempore.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate resumed the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. ALLOTT. Mr. President, I thank the Senator from Nebraska and the Senator from New York for yielding to me. The only reason for the request is that we are involved in the transportation bill conference at the moment, and there are certain matters there requiring my presence at this time.

Mr. President, it is unfortunate that this particular question should come up in connection with a discussion of the so-called Philadelphia plan. Personally I support what the President is trying to achieve through the implementation of this plan. I have supported civil rights measures for 15 years in the Senate and for 4 years as Lieutenant Governor of my State. I did it before that as district attorney, and I shall continue to attempt to develop the civil rights aspect of our life as far as I can.

The question here is not—and I want to make this clear—the correctness of the Philadelphia plan. The question is whether we are going to permit the derigation and diminishment of the powers of the Comptroller General as an independent arm of Congress. As I say, it is unfortunate, that the particular area which would be immediately affected is one which, even at this moment, I feel so very strongly about.

First of all, this issue has developed because, in substance, the Attorney General has said to the Comptroller General, "Even though you do not think that obligations made in connection with the Philadelphia plan are in accord with the 1964 Civil Rights Act, I do."

I ask unanimous consent that the pertinent portion of the Civil Rights Act be printed in the RECORD at this point.

There being no objection, the portion of the statute was ordered to be printed in the RECORD, as follows:

Nothing contained in this title shall be interpreted to require any employer * * * to grant preferential treatment to any individual or to any group because * * * of an imbalance which may exist with respect to the total number or percentage of persons of any race * * * or national origin employed by any employer [or] referred * * * for employment by any * * * labor organization * * * in comparison with the total number or percentage of persons of such race * * * or national origin in any community * * * or in the available work force in any community * * *.

Mr. ALLOTT. This part of the law is known as the prohibition against "quotas," and it was this provision which was the catalyst which brought up the present controversy. The issue has developed over the simple question of the use of the word "quotas."

The Attorney General contends that what they have set up is not quotas, but targets or goals, and they use as their parameters 19 to 23 percent. Now if a man employs 100 employees, and he fixes the number between 19 and 23, he can call it a target or a goal, but I do not think anyone can say that it is not a quota. It may not be stated as a specific quota or as a specific number, but the facts are that you are dealing with quotas and goals. So this is how the situation arises.

I have not heard all of the speeches because of my other responsibilities of the moment; but a statement has been made here to the effect that what we are doing is setting up the Comptroller General as a sort of supergod in the matter of the Government.

Nothing can be further from the truth. Any ruling of the Comptroller General may be appealed. It can be taken to the courts. The word of the Comptroller General is binding only upon the executive branch of the Government, not on anyone outside of it.

But unfortunately, the Comptroller General cannot go to court himself. He is not given that power by statute; and strictly speaking, within the context of the 1921 statute, I do not think he could employ counsel to defend himself if, by some legal machination, he became involved in a law suit.

Thus the Comptroller General is not a supergod in Government. He is the arm of Congress, and that is all he is; and thank God we have such an arm in the Government. If we did not have that arm, we in Congress would be subject to the will and whim of the executive branch.

A hundred times on this floor this year I have heard Senators complain bitterly about the arrogation of power by various people in the executive branch. It is an old story, because it has occurred in

previous administrations, both Republican and Democratic. But, Mr. President, if a constituent of ours enters into a contract or bids on a contract with an agency of the Government, and we think that somehow he has been unfairly treated in the letting of those bids, we can appeal to the Comptroller General to review the legalities of the bidding for and the letting of any such contract.

If we go to the department itself, we run into the very advocates who created the misdeed about which we are complaining. So, we have this independent arm of the Government here for this purpose. And what a grand job it has done over the years.

Mr. President, I think there are many questions about which I could wax as oratorical, hopefully, as the Senator from New York. I could speak with all of the emotion with which he speaks on civil rights questions. However, I wonder, even with the Philadelphia plan, how we could enforce a quota or a target when a man is unable to procure the workers through the unions which supply them. Does he then become liable for breach of contract for failing to fulfill his contract? I doubt it.

If the Attorney General can overrule the decision of the Comptroller General in this case—and I want to divorce it from the emotional issue—he can overrule the decision of the Comptroller General in any case which is referred to him. So, we are not just talking about one case here. We are talking about the whole field of Government activity.

That is a price that we in Congress cannot afford to pay—to take the authority we have given to the Comptroller General and give it to the Attorney General or any other branch of the Government.

And there is one great difference between this and the other branch of the Government. We cannot do away with the Attorney General. If he rules adversely on a proposition which is submitted to him, we cannot get rid of him. He just about has to be a completely dishonest man—which we have not had, thank God—in order to get rid of him.

There is one thing, however, that Congress can do. And that is that if the Comptroller General becomes irresponsible and unresponsive to the law of this land and unresponsive to the common honesty and ethics which we want in our Government, we can always change the law which created his office and diminish his powers, or we can replace the Comptroller General.

So, there is one great difference in this situation and in dealing with the Attorney General's office. And I must say that despite the Attorney General's ruling in this matter, I have the greatest respect for him. However, I do not agree with him in this case. I think his lawyers and legal counsel have overstepped themselves in an attempt to extend a statute beyond what we ever intended.

I have already pointed out that the Comptroller General cannot sue or be sued. And if he makes a mistake, or if he makes an error, the people who are aggrieved always have had recourse to the courts. However, we cannot always in-

fluence an Attorney General and convince him of our side of the question.

Mr. President, I want to close these very brief remarks by referring to two sections of the statute, and I shall ask unanimous consent that they be printed in the RECORD, although the distinguished Senator from Nebraska has already had them printed in the RECORD at another point.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD section 44 of title 31 and section 74 of title 31 of the United States Code.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

§ 44. Certain powers and duties transferred to General Accounting Office; conclusiveness of balances certified by Comptroller General.

All powers and duties which on June 30, 1921, were conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this chapter and sections 71, 471, 581, 581a of this title, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government. The revision by the Comptroller General of settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1921. (June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24.)

§ 74. Certified balances of public accounts; conclusiveness; suspension of items; preservation of adjusted accounts; decision upon questions involving payments.

Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller General of the United States, may, within a year, obtain a revision of the said account by the Comptroller General of the United States, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government. Nothing in this chapter shall prevent the General Accounting Office from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement.

The General Accounting Office shall preserve all accounts which have been finally adjusted, together with all vouchers, certificates, and related papers, until disposed of as provided by law.

Disbursing officers, or the head of any executive department, or other establishment not under any of the executive departments, may apply for and the Comptroller General shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the General Accounting Office in passing upon the account containing said disbursement (July 31, 1894, ch. 174, § 8, 28 Stat. 207; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24; Oct. 25, 1951, ch. 562, § 3 (1), 65 Stat. 639.)

Mr. ALLOTT. In these, particularly in section 74, it says in essence, that the balances certified by the General Accounting Office upon the settlement of public accounts shall be final and conclusive upon the executive branch of the Government, except that with respect to any persons whose accounts may have been settled, the head of the Executive Department or the Board or Commission, may obtain a revision of the said account. The language is contained in the law.

Now, we have not by this section, nor by the action of the Appropriations Committee, enlarged the powers of the Comptroller General. However, because we have been presented unwillingly with this direct challenge to the arm of Congress, we have no choice but to accept that challenge and say he is our arm and we expect to uphold him.

The Senator from Nebraska has already pointed out the necessity for action now.

The necessity for immediate action is that before Congress can act upon this, there will be 10, 20, or maybe 100 contracts entered into. And how do we recall those contracts? How do we put 100 or 10 or 50 people in litigation all over the country because Congress refuses to deal with this question affirmatively and forcefully at this time?

This is our protection. This is our arm, and God forbid, Mr. President, that we in the Senate will ever deprive him of the power we have given him until that day comes, and I do not think it ever will, when somehow he oversteps the authority in this act and jeopardizes the confidence of Congress in the Comptroller General.

I do not know how many Comptroller Generals have served since I have been a Senator. I have had occasion to disagree with their decisions. But I have always had the assurance that even though I could not get a Secretary on the phone, even though I could not talk to the counsel for a department in the executive branch, I always had the resource left to sit down in my office and say, "Mr. Comptroller General, these facts have come to my attention, and I refer them to you for a decision."

Every Comptroller General within my knowledge has utilized the power given to him by Congress with the greatest of discretion and the greatest of regard for the powers which Congress has invested in him.

Mr. President, I point out in conclusion to my fellow Senators that if we start down this path today by refusing to complete this particular section in the law, we are leaving the door wide open for the Attorney General to reverse the decisions of the Comptroller General or to modify the decisions of the Comptroller General any time he wishes.

And when that time has occurred and Congress has opened that door, we will no longer have an independent arm of the Government. We will have instead an agency which is the slave and the workman and at the order of the executive branch of the Government.

I thank the Senator for yielding to me.

Mr. JAVITS. Mr. President, I have a conference going on on the poverty bill.

Mr. ALLOTT. I have a conference going on in which the Senator is very much interested in some of the items, I am sure.

Mr. JAVITS. I noticed with the greatest of interest that when the Comptroller General wrote to the committee telling them about this imbroglio of the Philadelphia plan—and, by the way, it does revolve around the Philadelphia plan; does it not?

Mr. ALLOTT. Yes. The Philadelphia plan was only the catalytic agency for this.

Mr. JAVITS. That is what he says in his letter.

He did not ask for this broad grant of power. He sent the Senator a suggested provision in which he said he just confined it to the Philadelphia plan. I will hand it to the Senator.

That would have posed the straight issue of civil rights, without all the complications introduced by the very sweeping language of the committee.

I wonder if the Senator could enlighten us. Why did not the committee, if they were going to do anything about this, just go ahead with his provision? That is what he asked for. He did not want any broad, sweeping authority like the one contained in this supplemental.

Mr. ALLOTT. I know the Senator is a very brilliant New York lawyer and I am just a country lawyer—

Mr. JAVITS. That is a sure way to try to decapitate the Senator from New York. [Laughter.]

Mr. ALLOTT. I just want to say that, in my opinion, the language contained in this bill—and I want this legislative record to be clear—does not expand the authority of the Comptroller General one iota. The Senator will note that it begins with the words "In view of and in confirmation of the authority invested in the Comptroller General by the act of 1921."

Mr. JAVITS. May I say to my colleague that more liberty has been lost on that argument than on any other single argument of which I know—that it did not expand the authority, notwithstanding the words which say that whatever the Comptroller General holds is the supreme law of the land. I am sorry, but I cannot agree, and I hope very much the Senate is not ensnared by the same idea.

Mr. ALLOTT. Let us just look at it. We do not expand his authority outside the areas which he has now, which is to pass on bills which come to the Federal Government to finance, either directly or through any Federal aid or grant, any contract or agreement. If he makes an error, those contracts or agreements are still subject to the courts.

Two things are written in there: He is restricted to the areas of accounting and payment, and he is restricted to the general powers laid out in the Budget and Accounting Act of 1921.

Mr. JAVITS. I do not want to detain the Senator, but I cannot agree with him. The Comptroller General has held time and again that he is not even bound by the Court of Claims, and we confer

that authority in him by the clause the Senator did not read, "which the Comptroller General of the United States holds to be in contravention of any Federal statute."

I wish I could agree with the Senator, but I cannot. I point out again, as a critically important item of evidence, that the Comptroller General, himself, did not ask for any such authority. All he asked for was a pinpointed resolution about the Philadelphia plan.

Mr. ALLOTT. That is entirely correct. I know that the Senator is very devious—not in a bad sense, but because he is a very clever man—and of course the concept of this argument is to get us off on issues other than the power of the Comptroller General.

My purpose is to say that we are beginning the denigration and the deterioration of the independent arm of Congress, and that is the whole point of my discussion.

I thank the Senator for yielding.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CRANSTON in the chair). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS obtained the floor.

Mr. McGEE. Mr. President, will the Senator yield to me briefly?

Mr. JAVITS. I yield to the Senator from Wyoming without losing my right to the floor.

FEDERAL SALARY ACT OF 1969

Mr. McGEE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 13000.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 13000) to implement the Federal employee pay comparability system, to establish a Federal Employee Salary Commission and a Board of Arbitration, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. McGEE. I move that the Senate insist upon its amendments and agree to the request of the House for a conference, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. McGEE, Mr. YARBOROUGH, Mr. RANDOLPH, Mr. FONG, and Mr. BOGGS conferees on the part of the Senate.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the

fiscal year ending June 30, 1970, and for other purposes.

Mr. JAVITS. Mr. President, I shall not detain the Senate more than 10 minutes.

I believe we have discussed adequately what I consider to be and what others consider to be an improvident grant of authority to the Comptroller General, or at least locking in his authority in this way, in an absolute way, in every conceivable appropriation act, present and future, in a supplemental bill in the last days of the session. That alone is sufficient reason to reject the provision.

Mr. President, I wish to address myself to the Philadelphia plan, as such. I did not wish to contradict the Senator from Colorado (Mr. ALLOTT) because he is anxious to get away. Nevertheless, the central reason that the amendment is before us is the Philadelphia plan.

I call attention to the letter of the Comptroller General to the committee dated December 2, 1969, addressed to the Senator from West Virginia (Mr. BYRD).

Mr. JAVITS. Mr. President, the letter states:

I want to bring a matter to your attention which I think is of the utmost importance to the Congress and the General Accounting Office. This involves the Philadelphia Plan promulgated by the Department of Labor to increase the number of minority group workers in certain construction trades.

The letter goes on to say what he wants the Appropriations Committee to do. He submits to the Appropriations Committee a pinpoint provision, nothing like this broad locking in of absolute authority which is contained in section 904. It is a pinpointed provision directed toward the Philadelphia plan and it seeks to declare illegal or improper any plan like the Philadelphia plan. That is the central core.

Mr. President, I respectfully submit this is the central purpose of the amendment before us and the only conceivable reason I can see that it was drawn on the broad basis it was drawn, as to the whole broad power of the Attorney General is that it was only done so because the drafters did not want to make it a civil rights issue if they could avoid it. They wanted to make it an issue of the quarrel between the Attorney General and the Comptroller General. But this is the essence of what it is getting at, and this is what the Comptroller General asked for.

That leads me to the merits of the Philadelphia plan. The Philadelphia plan was drawn only by way of implementing an executive order. This applies only to government contractors.

The Civil Rights Act of 1964 deals with questions of discrimination in employment on the question of race and sex, but this matter applies only to contractors. The Philadelphia plan implemented an executive order of the President which sought to bring about some affirmative action by Government contractors which would bring about a greater measure of equality of opportunity in respect of employment, certainly a very legitimate effort by the United States.

In that respect, I should like to quote from the executive order indicating what we mean by saying an affirmative effort. The executive order says:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

Now this is the pertinent sentence:

The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, or national origin. Such action includes but is not limited to the future employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoffs in terms of rates of pay and other forms of compensation.

It was in implementation of that concept that the Philadelphia plan provided that part of the competitive bidding—this is a very important point—in respect to this whole matter—part of the competitive bidding on any Government contract in the Philadelphia area, on the part of seven specified crafts, where there had been a serious record of discrimination in employment, on the ground primarily of color, that part of the competition should be a goal which the individual bidding contractor set for himself as to the number of minority people he could bring into employment on that particular job in performing that particular contract, and that that was competitive bidding. And then Government, in deciding what contractor they would award the contracts to, would take that factor into consideration as an element of the award.

Now if the contractor was absolutely bound to that goal—and certain norms were specified by the Department of Labor, and certain parameters were considered they would have in that particular community—if the contractor were absolutely bound by that as an obligation, then we might construe it as a quota—an indirect quota. But that is not the case. The only thing the contractor has to show by way of performance is good faith—that he tried to perform. They give him various guidelines as to what good faith means, which are practicable and entirely within the outlines of union-management activities.

If the Government makes a charge against a contractor in that regard, that he has not used good faith, he does not thereupon assume the burden of proof. The burden of proof remains with the Government. The only issue is good faith—not that he performed—but good faith in trying to perform. The only thing shifted is the burden of going forward; that is, he has to come forward to show what he did about good faith, but final proof that he did not do what he was supposed to do, which was good faith, still remains with the Government.

It seems to me, and to the Attorney General, and to the President of the United States, to the Secretary of Labor, and to many authorities throughout the country, that that was nothing more than a reasonable implementation of the affirmative effort aspects of the original

Executive order which dealt with this whole question.

Now as to the argument of the Senator from Colorado (Mr. ALLOTT), how could a contractor meet a goal if, let us say a union cracked down and said that it would not take in any Negroes, or if they had to take in nonunion men, they would go out on strike, that is part of what is meant by the good faith aspect, if he does his best to show that he has performed his obligation. If he is frustrated he still gets his money for the contract. It seems to me that that is the turning point, the fulcrum to demonstrate that this was a matter of goals, that it was a matter of affirmative effort within the establishment of reasonable requirements, that it did not represent a quota for which the contractor should be penalized for reasons beyond control, or to which he was bound as a contractor. It is the good faith aspect.

This has rarely been emphasized by the opponents of the Philadelphia plan.

What is the virtue of the plan? In other words, why promulgate it at all? The endeavor was to require a contractor to utilize his resourcefulness in his relationships with labor, and the fact that they control a certain amount of employment and could take the initiative in order to improve what was a bad situation in many local unions, regarding the letting in of Negroes and other minorities into a union so that they could get jobs, with many consequences which have been detailed in testimony, and so forth.

Now I am deeply convinced, and many others in the country are convinced, that this plan was creative, and ran counter to no law. That it was a creative effort to do something which needed so urgently to be done—and which had been frustrating in terms of the feeling, theretofore, that, well, the union would not let them in, that unions were hard to move, that they moved slowly when they did move at all. There are some notable exceptions, such as the exception in the New York area, under the gifted leadership of Harry Van Arsdale and Pete Brennan, two outstanding labor leaders with enlightened minds. So it was an effort to "get off the dime" in that regard. It was a creative effort.

I respectfully submit, considering the pressure and difficulties under which we labor in respect to equal employment in the country, that the Philadelphia plan was not only lawful, but desirable and that the Congress should not, by this indirect action of an enormous and arbitrary vesting of authority in the Comptroller General, abort it.

That is exactly what we would be doing, Mr. President, in my judgment. I think that is the essence of the argument. As I say, I testified before the subcommittee of which the Senator from North Carolina (Mr. ERVIN) is the chairman. We had a very tough go on the thing. The Senator from North Carolina is not a man to let one go without searching questions and presentations of points of view, which will undoubtedly happen again and again.

The matter should be vested in the proper legislative committee and it seems

to me that is where it should be decided. If we get any suggestions from them for legislation, that is the way the issue should be handled on the basis of that kind of record and not by indirection in the last days of Congress on a supplemental appropriation bill, which is exactly what is being attempted.

Again I say, let us not get diverted by the issue of the power or lack of power of the Comptroller General. The fact is, if he has the power claimed for him, he has it, and he does not need this particular provision. The purpose of the provision is to abort the Philadelphia plan. I think, therefore, for two reasons—one, that there is danger of a much broader vesting of authority than anyone really wants, including Congress and, two, the aborting of a desirable effort, which looks promising in the building construction field, that Congress should turn down the provision.

When I began, I said that the procedure I would use would involve the making of a point of order which the Senator from West Virginia (Mr. BYRD) would then challenge on the ground that the provision was germane, with a vote on that.

I am afraid that that is confusing and Senators will not know whether to vote yea or nay or anything like that.

Therefore, I shall propose at the proper moment, when everyone else has had his say, to move to table the provision—we all understand that—with the understanding that it will be a matter of deferring action on it, so that it does not occur in this bill, with the realization that it will come before us at an appropriate time, and in an appropriate way.

The PRESIDING OFFICER. The Senator may not move to table, but a motion to strike out would be in order.

Mr. JAVITS. I understand it has been agreed to as original text. All right. In that case, I will stick to the original design and make the point of order against the amendment. But, before I do that, I should like to yield the floor so that any other Senator who wishes to speak, may do so.

Mr. President, apparently no Senator wishes to be heard on the subject, and I therefore now make a point of order against section 904 on the ground that it is legislation on an appropriation bill.

Mr. BYRD of West Virginia. Mr. President, section 901, which was proposed by the Bureau of the Budget and which was included in the bill by the House committee and approved by the House of Representatives, is a general provision which amends restrictions or provisions in all of the appropriation bills which have previously been approved by the Congress for fiscal year 1970.

Public Law 91-114, approved November 10, 1969, increased the maximum travel allowances of Government employees traveling on official business within the continental United States from \$16 to \$25 per day and from \$30 to \$40 per day when travel is performed under certain unusual circumstances.

Inasmuch as the section which was approved by the House amends restrictions contained in all of the appropri-

ation acts, it is in order in the Senate for a general provision restricting the funds in all of the appropriation acts to be included in this bill.

Section 904, which the committee has proposed, is in order in this bill since the House has already opened the door on restrictions and limitations relating to all of the other appropriation bills. Therefore, Mr. President, I raise the question of germaneness.

The PRESIDING OFFICER. Under rule XVI, paragraph 4, the Chair is required to submit the question to the Senate to be determined without debate.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. A "yea" vote on this ruling will be a vote to retain the provision in the bill; a "nay" vote will be a vote to strike it from the bill as nongermane. Is that correct?

The PRESIDING OFFICER. The Chair will first put the question. The question is: Is it the judgment of the Senate that the section is germane to the bill?

Mr. JAVITS. I now repeat my inquiry.

The PRESIDING OFFICER. A "yea" vote would hold the section to be germane, and it would stay in the bill. A "nay" vote would hold it to be not germane to the bill.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, if the manager of the bill is willing, I am willing to call off the quorum call and go ahead and vote.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. So that Senators may be clear on the matter of voting, will a vote of "yea" be a vote to retain section 904 in the bill, and a vote of "nay" be a vote to strike section 904 from the bill?

The PRESIDING OFFICER. The Senator is correct. The question is, Is it the judgment of the Senate that section 904 is germane to the bill?

Mr. BYRD of West Virginia. Mr. President, I ask that the Senate be in order, and that the well be cleared of Senators and staff members.

The PRESIDING OFFICER. The Senate will be in order. Senators and staff members will take their seats.

Mr. McCLELLAN. Mr. President, the Department of Labor, on June 27, 1969, issued the revised Philadelphia plan, so-called because it was to be applied initially to the Philadelphia area and subsequently to other areas of the Nation.

The plan provides that there shall be

included in invitations for bids on both Federal and federally assisted construction projects in the Philadelphia area:

First, specific ranges of minority group employees in each of six basic skilled construction trades;

Second, designation by the bidder of the specific number of minority group employees, within such ranges, that he will employ in each of the skilled trades on the job; and

Third, failure to "make every good faith effort" to attain the minority group employment "goals" he has specified in his bid, may result in the imposition of sanctions including the termination of his contract.

More specifically, the plan requires that by 1973, employment from among minority groups would be 22 to 26 percent for ironworkers; 20 to 24 percent for plumbers, pipefitters, and steamfitters; and 19 to 23 percent for sheetmetal, electrical, and elevator construction workers. The plan also provides that these percentages would rise each year.

Despite the fact that the Comptroller General, on August 5, 1969, issued a decision finding that the Philadelphia plan contravened the 1964 Civil Rights Act and that he would be required to so hold in passing upon the legality of expenditures of appropriated funds under contracts made subject to the plan, the Secretary of Labor is continuing to apply and enforce it.

Mr. President, the Comptroller General's ruling is consistent with a fundamental principle of constitutional law, that neither the President nor a department head at the President's direction or with his approval, has the authority to act at variance with valid statutory provisions. The Supreme Court, throughout the history of this Nation, has consistently struck down Executive orders which contravene the provisions of a valid statute enacted by the Congress. See for example *Kendall v. U.S.*, 12 Peters 524; *U.S. v. Symonds*, 120 U.S. 46; *Little v. Barreme*, 2 Cranch 170. As Justice Frankfurter stated in the Steel seizure cases (343 U.S. 579, 585);

Where Congress has acted the President is bound by the enactment.

And Justice Holmes declared in *Myers v. United States* (272 U.S. 52, 177):

The duty of the President to see that the laws be faithfully executed is a duty that does not go beyond the laws or require him to do more than Congress sees fit to leave within his power.

When the Congress enacted the Civil Rights Act of 1964, and therein promulgated our national policy on equal employment opportunity, it became the constitutional responsibility and obligation of the executive branch of our Government to carry out that policy in accord with the intent of Congress as expressed in the statute. In its enunciation of that policy Congress made clear, both in the statutory language and in the legislative history, that the law was not to be interpreted as requiring the introduction of quota or other representative or preferential hiring requirements into the employment process. Indeed, it was generally conceded by the sponsors and floor managers of the legislation that any such

preferential employment requirements were inherently discriminatory; that they would constitute discrimination in reverse and would be violative of the 1964 Civil Rights Act.

Mr. President, I do not believe that anyone can read the language of the Civil Rights Act of 1964, or its legislative history, without coming to the irrevocable conclusion that it makes unlawful the establishment of quota or other preferential employment requirements with respect to minority groups—or majority groups for that matter.

The language of section 703(j) of title VII—the Equal Employment Opportunity title of the act—is so clear that one does not have to be a lawyer to understand it. It provides in pertinent part as follows:

Nothing contained in this title shall be interpreted to require any employer * * * to grant preferential treatment to any individual or to any group because * * * of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin, employed by any employer or referred for employment by * * * any labor organization * * * in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Clearly, as the Comptroller General pointed out to the Secretary of Labor, section 703(j) establishes the prohibition against requiring any employer to hire or employ a specified proportion, number, or percentage of his employees from certain racial or national origin groups. Thus did the Congress declare that the introduction into the employment process of quota or other preferential hiring requirements based on race, color, religion, sex, or national origin, is unlawful and prohibited.

The legislative history of the 1964 Civil Rights Act is replete with statements by the sponsors and floor managers of that legislation explaining that title VII is intended to prohibit the use of race or national origin as a basis for hiring. For example, at page 6549, volume 110, part 5, of the CONGRESSIONAL RECORD, former Senator Hubert Humphrey explained title VII as follows:

Contrary to the allegations of some opponents of this title, there is nothing in it that will give any power to the Commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or to achieve a certain racial balance.

That bugaboo has been brought up a dozen times; but it is nonexistent. In fact the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualification, not race or religion.

In an interpretative memorandum of title VII submitted jointly by Senators JOSEPH CLARK and CLIFFORD CASE, floor managers of that legislation in the Senate, it is stated:

It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make

a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any of the five forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.

There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.

There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance.

Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a non-discriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes for future vacancies, or once Negroes are hired, to give them special seniority rights at the expense of white workers hired earlier.

At page 7218 of volume 110, the following answers were offered to the objections raised during debate on the provisions of title VII, by Senator CLARK:

Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.

Answer: Nothing in the bill will interfere with merit hiring or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.

Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.

Answer: Quotas are themselves discriminatory.

Mr. President, it should also be noted that title VI of the Civil Rights Act of 1964, entitled "Nondiscrimination in Federally Assisted Programs" is applicable to precisely the same employers and the same federally assisted programs to which the Philadelphia plan is being applied. Not only does that plan contravene the congressional policy expressed in title VI with respect to non-discrimination in employment practices, it also directly violates the congressional mandate addressed to all executive departments and agencies, which is set forth in section 604 of title VI. That section expressly provides:

Nothing contained in this title shall be construed to authorize action under this

title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization, except where a primary objective of the Federal financial assistance is to provide employment.

It is hardly necessary to add that the promulgation and implementation of the revised Philadelphia plan in the face of section 604 of title VI, constitutes, in effect, a nullification of that title, and its enactment by the Congress becomes nothing more than a gesture in futility.

Title VII, because it, too, applies to the same employers who are covered by the Philadelphia plan, is likewise reduced to a nullity wherever that plan is put into effect.

Furthermore, because those employers would necessarily have to give consideration to race, color, and national origin in order to meet their commitments respecting minority hiring requirements of the Philadelphia plan, they would, because of that fact, be in violation of the Civil Rights Act, which obligates them to hire and employ without regard to the individual's race, color, religion, sex, or national origin.

Mr. President, it will be a sorry day for this Nation, if the executive department can so far usurp the legislative powers of the Congress, that it can supplant and nullify laws that Congress has enacted, by executive orders, rules, regulations, and other impositions and requirements.

The Secretary of Labor has stated that the Comptroller General, in ruling that the Philadelphia plan is invalid, has ignored Executive Order 11246 as an independent source of law. Such a statement represents an apparent failure on the Secretary's part, to recognize the fact that under our Constitution all legislative power is vested in the Congress.

Mr. President, the Supreme Court, in upholding the Congress power to legislate, has repeatedly emphasized the fact that the President's function in the legislative process, is limited to recommending legislation he thinks wise and the vetoing of legislation he considers bad. And the Court has been equally emphatic in pointing out that the President's constitutional duty to faithfully execute the laws, begins and ends with the laws that Congress has enacted—see, for example, *Youngstown Steel v. Sawyer, supra*.

Mr. President, the Civil Rights Act of 1964 was the legislative product of lengthy and intensive deliberation and legislative compromise by the Members of both Houses of Congress. Executive Order 11246, issued by President Johnson in 1965 and cited as the authority for the Philadelphia plan is the product of unilateral Executive judgment and decision. The Executive order and the Philadelphia plan do not constitute an implementation of the Civil Rights Act or the congressional intent which was enunciated therein. The plan's requirement that certain Government contractors meet prescribed racial employment quotas is simply an example of the overreaching exercise of Executive power. Clearly, the Executive is attempting to achieve objectives beyond those intended by the Congress, by means expressly prohibited by the statute.

It is one thing for the President to issue an executive order which properly implements a law enacted by the Congress and accords with the congressional policy therein enunciated. It is quite a different thing for the President or any head of an executive department or agency to issue an order which contravenes an enactment of Congress, and conflicts with the congressional policy set forth.

The Labor Department has sought to justify the Philadelphia plan by trying to distinguish between quotas, goals, and ranges, but neither these exercises in semantics nor anything short of a law duly enacted by Congress—which I am sure will not be forthcoming—can justify the Philadelphia plan.

Mr. BROOKE. Mr. President, the so-called Philadelphia plan was designed to implement the intent of Executive Order 11246, promulgated by President Johnson on September 24, 1965. Under this order, all Federal Government contracts and Federally-assisted construction contracts were required to contain specific language obligating the contractor and his subcontractors not to discriminate in employment because of race, color, religion, sex, or national origin.

This is no new concept in American jurisprudence. Evidence of this intent is clear in the Constitution, which talks not only about the general principles of Justice, the blessings of liberty, and the general welfare, but which also speaks specifically of freedom of religion, due process of law, equal protection, and the privileges and immunities of all citizens. It is clear in the various Civil Rights Acts passed since 1957, which provide protection specifically against discrimination in accommodations, voting, and employment. It is embodied in the National Labor Relations Act which forbids discrimination by labor unions and employers, and in the regulations issued by the Department of Labor pertaining to applicants, trainees and apprentices. The Government of the United States does not condone discrimination on the basis of external factors unrelated to individual capabilities.

Since 1965, however, we have learned that simple prohibition of discrimination is not enough. Overt acts of discrimination not only are becoming less common; they were never the heart of the problem to begin with.

The real problem of discrimination in America is what the Civil Rights Commission has referred to as "systematic discrimination," but what I prefer to call "systemic" or "intrinsic" discrimination. Discrimination against minorities, particularly in the employment field, is built into the very structure of American society. Three black children in four in America attend an essentially segregated school from the day they enter kindergarten. Negro children, on an average, complete little more than 10 years of school, as compared to 1.5 for white children. Their schools are for the most part of poorer quality—they are older and lack the facilities enjoyed by students in predominantly white institutions. Funds for job training equipment, for laboratory facilities, for type-

writers and teaching aids, simply are not available in many of the schools attended by blacks. A Negro student is more likely than his white counterpart to find his formal education irrelevant to his surroundings. It goes without saying that it does not, in far too many cases, prepare him to compete for jobs or for higher educational opportunities. These circumstances are changing, to be sure, but for the vast majority of non-white youngsters in America they are still a tragic fact of life.

Once a black child has left school, he is two and a half times more likely to be unemployed, even in jobs requiring the most basic skills. The latest statistics issued by the Department of Labor, in fact, indicate that unemployment among black males under 21 years of age ranges between 30 and 45 percent in most of our largest cities. And because of this lack of preparation for society, the unemployed person is often more likely to turn to crime, to serve in prison, to become a drag upon his community.

Even those blacks who survive the system, however, find obstacles placed in their way which do not confront most other Americans. If a minority applicant seeks employment in construction or trucking or other similar occupations, he will find that employment is often based upon union recommendation. The union passes the word to its members that an employer is looking for men; those members are predominantly white, and the social patterns are such that they will pass the word along to predominantly white friends. Thus employment opportunities in the trades have been systematically closed to minority persons.

The same is true, to a great extent, in the so-called white collar jobs. Until very recently, most companies recruited on the larger college campuses. Few thought to visit the more than 100 Negro colleges scattered throughout the United States—the colleges where more than half of the Negro college graduates still receive their training. Here again, there is no question of deliberate discrimination, but a pattern of discrimination is an intrinsic part of the system.

There are other barriers as well. There is no reason, for instance, why a laborer on certain construction jobs must have a high school education. It is desirable, of course. It is assumed that in order to work effectively with others a man should have some of the basic understanding which can be gained through years of formal schooling. But it is not essential, and it is particularly not essential when it closes employment opportunity to large numbers of young blacks who left school for reasons totally unrelated to understanding of others or to their work capabilities. Compensatory programs can and should be provided either through work or through other organizations, but as a general rule, job qualifications which are not substantially related to job responsibilities unfairly penalize minority persons.

The policy of assigning minority employees to "traditional" jobs or departments is also an informal, systemic barrier to full opportunity in employment. This has been true throughout our society: Negroes have been clerks and cus-

todians but not salesmen and executives, nurses aides but not nurses, teachers in black schools but not in white ones, security guards but never supervisors. These conditions are slowly changing, but even now a past history of discrimination on the part of some employers deters many qualified minority persons from applying for positions.

These are the kinds of situations which the Philadelphia plan and now the Boston plan as well are designed to overcome. Prohibition of discrimination is not enough; positive action is necessary.

In considering what kind of positive action might be employed without hurting present employees or dealing with them unfairly, the drafters of the plan have devised a simple yet effective formula. Present employees will not be affected at all by the plan; their jobs will be as secure as they have always been. The plan does, however, seek to establish a formula for hiring minority members on future jobs. It has been determined by the Department of Labor that each construction craft should have approximately 7.5 percent new job openings annually due to death, disability, retirement, and loss of workers for any other reason. Operating solely on the basis of these anticipated new job openings, the Office of Federal Contract Compliance, working in conjunction with the Federal contracting agency, will devise a set of criteria for minority employment for each contract. These standards will be clearly spelled out in the bids and each contractor who desires to bid on the Government contract in question will be obligated to include in his proposal a statement of his goals for attaining these standards. Once the contract is awarded, checks will be conducted to determine whether the employer is in fact living up to his obligation.

I favor this approach for two basic reasons. First, because, as I have stated above, I believe that positive efforts to eliminate discrimination are essential. But second, I appreciate the fact that there is no question of the Federal Government dictating to the States, the cities, or the local contractors. There are, in fact, no Federal standards involved. There is simply a statement of Federal intent, embodied in Executive Order 11246, with the mechanics to be worked out on the local level, taking into account local factors such as: the current extent of minority group participation in the particular trade; the availability of minority group persons for employment in such trade; the need for training programs in the area; and the impact of the program upon the existing labor force. Even then, after all these criteria have been taken into account, the contractor and subcontractors are still allowed leeway in meeting the minority employment targets, and need only demonstrate that they have made a good faith effort to do so.

Mr. President, nothing could be fairer, more equitable, or ultimately more beneficial for all concerned. The spirit of the law has for too long been ignored in the field of equal employment opportunity. I welcome the promulgation of the Philadelphia plan. The people of Boston have welcomed the promulgation of a similar

plan in that community. I applaud the administration's unequivocal support for these efforts, and I hope to see plans worked out to achieve similar results in other communities all across our country. Only through such means can we truly make America a land of opportunity for all our people.

The PRESIDING OFFICER. On this question, the yeas have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARTKE (when his name was called). Mr. President, on this vote I have a pair with the Senator from South Carolina (Mr. HOLLINGS). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. RIBICOFF (when his name was called). Mr. President, on this vote I have a pair with the Senator from Georgia (Mr. RUSSELL). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

The rollcall was concluded.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUE), the Senator from Georgia (Mr. RUSSELL), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Illinois (Mr. PERCY). If present and voting, the Senator from Texas would vote "yea," and the Senator from Illinois would vote "nay."

The result was announced—yeas 52, nays 37, as follows:

[No. 259 Leg.]

YEAS—52

Aiken	Ervin	Pearson
Allen	Fannin	Prouty
Allott	Fulbright	Proxmire
Baker	Goldwater	Randolph
Bennett	Gore	Saxbe
Bible	Gurney	Smith, Maine
Burdick	Hansen	Sparkman
Byrd, Va.	Holland	Spong
Byrd, W. Va.	Hruska	Stennis
Cannon	Jordan, N.C.	Stevens
Cook	Jordan, Idaho	Talmadge
Cotton	Long	Thurmond
Curtis	Magnuson	Williams, Del.
Dodd	Mansfield	Yarborough
Dole	McClellan	Young, N. Dak.
Dominick	Metcalf	Young, Ohio
Eastland	Miller	
Ellender	Murphy	

NAYS—37

Bayh	Hart	Moss
Bellmon	Hatfield	Muskie
Boggs	Hughes	Nelson
Brooke	Jackson	Packwood
Case	Javits	Pastore
Church	Kennedy	Pell
Cranston	Mathias	Schweiker
Eagleton	McCarthy	Scott
Fong	McGee	Smith, Ill.
Goodell	McGovern	Tydings
Gravel	McIntyre	Williams, N.J.
Griffin	Mondale	
Harris	Montoya	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Hartke, against.
Ribicoff, against.

NOT VOTING—9

Anderson	Inouye	Russell
Cooper	Mundt	Symington
Hollings	Percy	Tower

The PRESIDING OFFICER. So in the judgment of the Senate the amendment is germane.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. EAGLETON in the chair). The Senate will be in order.

Mr. BYRD of West Virginia. Mr. President, during the course of his remarks the Senator from New York has emphasized that if section 904 is adopted, the power of the Comptroller General will then preclude any appeal to the courts by a party who feels he is adversely affected by an opinion issued by the Comptroller General. I do not agree with the conclusion of the Senator from New York, because opinions of the Comptroller General are only binding on the executive branch.

Nevertheless, I have an amendment at the desk. I call it up now and ask that it be stated. It is an amendment which will make it indubitably clear that section 904 will in no way preclude any review of any action taken by the Comptroller General.

The amendment merely reaffirms the situation with regard to judicial review which has existed for almost 50 years. The amendment is not necessary, in reality, except to reassure Senators that the Comptroller General will not have authority to override Federal courts.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 15, end of line 15, insert: "Provided, That this section shall not be construed as affecting or limiting in any way the jurisdiction or the scope of judicial review of any Federal court in connection with the Budget and Accounting Act of 1921, as amended, or any other Federal law."

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the language in the bill may be modified to include the language which has just been read by the clerk.

Mr. GRIFFIN. Mr. President, reserving the right to object, did the Senator say that the language in the bill be modified?

Mr. BYRD of West Virginia. The Senator is correct.

Mr. GRIFFIN. That would be tantamount to adopting the language.

Mr. BYRD of West Virginia. Not exactly, because if the language were to be so modified, it could still be stricken on a motion to that effect.

Mr. GRIFFIN. It would be tantamount to the adoption of the amendment the Senator sent to the desk. Is that correct?

Mr. BYRD of West Virginia. I am asking to modify the language in the bill. That is all I am asking to do. I can move to do it.

Mr. GRIFFIN. That is quite a request. I object.

Mr. JAVITS. Mr. President, if the Senator would yield, there is no point in

asking unanimous consent to do it unless the Senator really asks unanimous consent for its adoption.

The Senator from Michigan, after all, would have the right to propose a substitute or an amendment to the amendment or any other way he wanted to deal with it.

Mr. BYRD of West Virginia. Mr. President, I offer this as an amendment to the language in the bill, and I move its adoption.

Mr. JAVITS. Mr. President, will the Senator yield for a question?

Mr. BYRD of West Virginia. I yield.

Mr. JAVITS. I would hope that the Senator, in the course of his discourse, would enlighten us as to the existing power, if any, of the courts to review decisions of the Comptroller General; because the language of his amendment is based upon an existing power, as it says, to limit, and so forth. So that I think we would have to know the underlying basis for the Senator's amendment.

Mr. BYRD of West Virginia. I just stated, Mr. President, the underlying basis for my amendment. Section 904 of the bill does not give authority to the Comptroller General to override any Federal Court. Decisions of the Comptroller General are not binding on the courts. Any money judgment rendered by a court is payable from an indefinite appropriation made for that purpose or from an appropriation made by Congress if over \$100,000. Section 904 does not change the situation one iota insofar as the courts are concerned.

There have been numerous cases over the years in which the Comptroller General has found a payment illegal but a court has held otherwise. When this has happened, payment has been made. That is the way it should be.

It is wrong to say that the Comptroller General would ignore a judicial ruling. If a judicial decision is rendered, the Comptroller General will follow that decision.

The Budget and Accounting Act says that opinions of the Comptroller General are final and conclusive on the executive branch. It does not say one word about the judicial branch. But because of the concern that was stated by the Senator from New York when he spoke earlier in the afternoon—concern which I think is unwarranted—to the effect that the power of the Comptroller General under the committee language would preclude any appeal to the courts by a party who feels he is adversely injured by any opinion issued by the Comptroller General, I have offered to add language to the bill to provide as follows: I maintain that this amendment is not needed, but I am offering this amendment to reassure the Senator from New York and other Senators on the point. My amendment to the committee language would read as follows:

Provided, That this section shall not be construed as affecting or limiting in any way the jurisdiction or the scope of judicial review of any Federal court in connection with the Budget and Accounting Act of 1921, as amended, or any other Federal law.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. HRUSKA. The question has arisen whether section 904 as written will in any way change the existing statute with reference to appellate procedures, appellate review, when the Comptroller General makes a decision. We thought we had it quite clearly put into section 904—that is, the Senator from Colorado was particularly instrumental—in the first few words of section 904—namely, "In view of and in confirmation of the present authority of the Comptroller General, the following shall be the law."

It was thought that that would nail it down quite certainly. There is some question about it. It seems to me that the additional language which the Senator seeks now to insert into the bill will dispel that beyond any doubt whatever, and that whatever appellate review characteristics now attach to the law will be retained in their full text and in their full intent.

Is that not correct?

Mr. BYRD of West Virginia. The Senator is absolutely correct.

Mr. GRIFFIN. Mr. President, I send to the desk an amendment to the amendment of the Senator from West Virginia and ask that it be stated.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read as follows:

At the end of the amendment offered by Mr. BYRD add the following paragraph:

"If such holding of the Comptroller General is contrary to a formal opinion of the Attorney General, the holding of the Comptroller General shall, at the suit of the Attorney General, be reviewable in accordance with 5 U.S.C. 701-706, and in such event the court shall stay the decision of the Comptroller General pending final judicial determination of the issue."

Mr. GRIFFIN. Mr. President, the amendment offered by the distinguished Senator from West Virginia may or may not be meaningful. There is a good deal of disagreement among lawyers as to what power the courts now have to review holdings by the Comptroller General. It is clear, however, that if section 904 were left as the committee has written it, Congress would be saying that a holding by the Comptroller General would be in effect the law of the land.

I think it is very important to note that this language in a supplemental appropriation bill is very broad. It says:

No part of the funds appropriated or otherwise made available by this or any other act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute.

Ordinarily, we look to the courts to be the final arbiter as to what is or is not in contravention of a Federal statute. But here, Congress itself purports to give to the Comptroller General the final and binding authority to hold as to whether or not a Federal statute has been contravened.

Mr. President, this is a very dangerous and far-reaching provision—aside from the merits or demerits of the so-called Philadelphia plan. I would hope that the Senate realizes that the language of section 904 is not limited by any means

to the Philadelphia plan. It reaches far beyond, seeking to give the Comptroller General, in effect, nonreviewable judicial powers.

The amendment of the Senator from West Virginia is of uncertain meaning. He would be more acceptable if we amend it to make it clear that in a situation where the Attorney General of the United States disagrees with the Comptroller General, that conflict could be resolved by the courts. That is all my amendment does.

Is not that the way that a dispute in such a situation should be resolved? Is that not what the courts are for?

If the Byrd amendment, as modified, was accepted, then section 904—even though in my humble opinion it should not be a part of an appropriation bill—it would be acceptable.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. GRIFFIN. I yield.

Mr. HOLLAND. Would not the words that the Senator suggests to add change the original meaning and the present meaning of the 1921 act, which specifically holds in two different places that the decision of the General Accounting Office, or the Comptroller General, is final and conclusive insofar as the executive department is concerned? The Attorney General is part of the executive department.

I am quite willing to concede that there have been many suits, and I hope there always will be a door open for any litigant not a part of the executive department who feels that he has been injured by a decision of the General Accounting Office. But the purpose of the 1921 bill was to assure Congress of control, so far as the executive department was concerned, in the spending of money made available by Congress.

The matter that the Senator has suggested would take away entirely the final and conclusive and binding effect, it seems to me, of the decision of the Comptroller General which is provided for so clearly by the 1921 act.

I ask the Senator if that would not be the result of the words he seeks to add.

Mr. GRIFFIN. It seems to me that the Senator from Florida is making the case that the amendment of the Senator from West Virginia, has little or no meaning; that there is no judicial review in the situation which the Senator from Florida has described.

Mr. HOLLAND. Mr. President, that is my understanding of the meaning of the 1921 act.

Mr. GRIFFIN. My amendment simply seeks to provide some method for additional judicial review in a situation in which the Attorney General disagrees with the Comptroller General.

Mr. HOLLAND. The point I am making is that the 1921 Act very clearly makes the decision of the legislative branch, as represented by the Comptroller General, final on the question of the propriety of the disbursement as between Congress and the executive department. It does not go further than that at all. It does permit, of course, access to the courts by any aggrieved party.

That access has been had dozens of times, if not hundreds of times. I hope the courts are open to such cases. But the purpose of the bill was to give Congress the assurance that their agent would have the final say between Congress and the executive department on the propriety of the particular expenditure.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. GRIFFIN. I yield.

Mr. HRUSKA. Mr. President, I wish to ask the Senator from Florida this question. Is it not further true that the purpose of the amendment of the Senator from West Virginia is to assure that those appellate procedures now existent in the bill and existent since 1921 will be preserved and maintained?

Mr. HOLLAND. That is the purpose. I think it is not necessary for him to add those words. I think it is provided already by the committee provision. But I understand the Senator from West Virginia was simply trying to assure the Senator from New York, who has doubts on this matter—although he is the former Attorney General of the State of New York and he should have known of the fact—that many cases have been brought by parties who claimed they were aggrieved by the decision of the General Accounting Office.

Those cases sometimes upheld the General Accounting Office and sometimes they ruled otherwise. There has never been any deprivation of the right of private parties to go to court where the General Accounting Office makes a rule. But the purpose of the act of 1921, as I understand it, was to hold that the General Accounting Office, or the Comptroller General, when he made a decision as to the propriety of a particular expenditure under an appropriation and the terms of that appropriation as made by the Congress, was final so far as an executive department was concerned. It was an effort to preserve balance between the executive department on the one hand and the legislative department on the other hand, which has full control of the power of appropriating. It was to follow through to be sure that money was being expended in the way it was appropriated. At least, that was and still is my understanding.

Mr. HRUSKA. Is it not true that present appellate procedures would be supplanted by the amendment of the Senator from Michigan since it creates new procedures which have not been tested? This amendment would introduce an uncertain factor into the bill rather than the certainty present as the result of the 1921 act.

Mr. HOLLAND. Of course, the Senator is correct. This would introduce new legislation into the 1921 act.

Mr. HRUSKA. The Senator is correct.

Mr. HOLLAND. Whereas, the provision coming from the committee is simply to call attention to the fact that this is the law and to have the executive department think again. Let us remember that the author of the executive agreement was the former President Johnson. I do not think any of us would say he was unwilling to use power if he had the power. I do not think any of us would feel

his Attorney General would not have been willing to uphold his decision to use the power, I say that respectfully.

But this effort to use this power has not come until we have a new administration and a new Attorney General who is new to government and who has not realized yet the purpose of the 1921 act is to continue and preserve the balance of power by having the arm of the legislative branch to be the final, conclusive voice as to the propriety of an expenditure, which can only be made under an appropriation made by Congress.

Mr. GRIFFIN. Mr. President, on the desks of many Senators there is a copy of a letter from the Attorney General.

Mr. President, I ask unanimous consent that the full text of the letter be printed at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GRIFFIN. Mr. President, in his letter dated today, Attorney General John Mitchell states in part:

The provisions of Section 904, if I understand them correctly, would alter present law in at least two respects. First, they would prohibit, or could be construed to prohibit, any Federal payment to be made on any contract entered into or containing any provision in violation of Federal law. The prohibition would operate without regard to the nature or gravity of the violation, responsibility of the contractor, or any other equitable consideration. This would impose a harsher rule on those who contract with the Government than at present. Now, not every illegality or irregularity invalidates a contract, and even where the contract itself may be invalidated, a contractor in appropriate circumstances will be entitled to be paid the value of his services. *New York Mail and Newspaper Transportation Co. v. United States*, 154 F. Supp. 271 (Ct. Cl. 1957), cert. denied, 355 U.S. 904 (1957); *Crocker v. United States*, 240 U.S. 74 (1916). Furthermore, this harsh rule would be applied not only to those who contract directly with the Federal Government, but to those who deal with Federal grantees.

And the Attorney General continues:

Section 904 alters existing law in another significant respect. It provides that the Comptroller General's determination as to the legality of any contract is binding whether or not such determination is later upheld by the courts. As I read the Section it would be fruitless for a contractor to sue in the Court of Claims on a contract held by the Comptroller General to be illegal, since even if the court agreed with the plaintiff's view of the law, this Section would prevent payment being made to satisfy a judgment in his favor.

EXHIBIT 1

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., December 18, 1969.

Hon. HUGH SCOTT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCOTT: I am writing to express my concern with respect to the provisions of Section 904 of H.R. 15209, the Supplemental Appropriation Bill, 1970, presently under consideration in the Senate.

Section 904 provides:

"In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any con-

tract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute."

The Comptroller General, under present law is authorized to settle and adjust all claims by or against the Government of the United States, 31 U.S.C. 71, and to settle the accounts of accountable officers of the Government, 31 U.S.C. 72, 74. In the performance of this function he has, historically, been required to determine the legality of expenditures and the availability of appropriations to make such expenditures. His determinations of law are not, however, binding on affected private parties or the courts, *Miguel v. McCarr*, 291 U.S. 442, 454-55 (1934).

The provisions of Section 904, if I understand them correctly, would alter present law in at least two respects. First, they would prohibit, or could be construed to prohibit, any Federal payment to be made on any contract entered into or containing any provision in violation of Federal law. The prohibition would operate without regard to the nature or gravity of the violation, responsibility of the contractor, or any other equitable consideration. This would impose a harsher rule on those who contract with the Government than at present. Now, not every illegality or irregularity invalidates a contract, and even where the contract itself may be invalidated, a contractor in appropriate circumstances will be entitled to be paid the value of his services. *New York Mail and Newspaper Transportation Co. v. United States*, 154 F. Supp. 271 (Ct. Cl. 1957), cert. denied, 355 U.S. 904 (1957); *Crocker v. United States*, 240 U.S. 74 (1916). Furthermore, this harsh rule would be applied not only to those who contract directly with the Federal Government, but to those who deal with Federal grantees.

Section 904 alters existing law in another significant respect. It provides that the Comptroller General's determination as to the legality of any contract is binding whether or not such determination is later upheld by the courts. As I read the Section it would be fruitless for a contractor to sue in the Court of Claims on a contract held by the Comptroller General to be illegal, since even if the court agreed with the plaintiff's view of the law, this Section would prevent payment being made to satisfy a judgment in his favor.

I am, of course, not indifferent to the effect which this provision would have on the functions of this Department in advising the President and the officers of the Executive Branch on questions of law arising in the course of their duties. 28 U.S.C. 511, 512. In executing the laws, the Executive Branch must of necessity interpret them. Such interpretations may, on occasion, conflict with the view held by the Congress; but in such case our system provides as ready corrective new legislation or resort to the courts. Because of the limited time available, I have limited myself to what seem to me to be these serious practical objections. I am bound to say, however, that the authority to be vested in the Comptroller General under Section 904 would, in my view, so disturb the existing allocation of power and responsibility among the several branches of the Federal Government as to raise serious questions as to its constitutionality.

I therefore urge that Section 904 be deleted from the bill.

Sincerely,

JOHN M. MITCHELL,
Attorney General.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. GRIFFIN. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I think we are now again demonstrating what a terrible mistake it is to legislate so seri-

ous a matter in this atmosphere. I wish to explain why.

The power of the Comptroller is contained in the Budget and Accounting Act and it reads as follows:

Balances certified by the General Accounting Office upon the settlement of public accounts shall be final and conclusive upon the executive branch of the government.

I shall read that again, because I think it is very important:

Balances certified by the General Accounting Office upon the settlement of public accounts shall be final and conclusive upon the executive branch of the government.

One could say a certified balance, nonetheless, ran afoul of some Federal law. It is very possible. The whole thing could be secret. The contractor may go into court and say that the balance may be final on the executive department but not on him. That is obvious. No one has had a chance to read the case law. Let us assume it is done. So that is where it stands now. Let us assume the contractor can go in and challenge it. It is binding on the executive department. But now we are giving him this power.

Page 15, line 14 reads:

Any contractor or agreement which the Comptroller General of the United States holds—

That is a tough word—

to be in contravention of any Federal statute.

I say that is not just binding on the executive department but everybody: The contractor, the executive department, the judicial department, and everybody concerned. In other words, you are really making fundamental changes in a broad and sweeping provision of law the authority which the Comptroller General has now. He has no authority to hold anything according to the strict interpretation of the contract. Maybe that enters into his decision when he refuses to certify. But here, if we give him that power, he can defy anyone. If he holds it to be in contravention, that binds everyone, the contractor, as well as the executive department.

Now, my friends, this is a critically important difference. It is very important. A few sweeping changes can be made. I do not even argue against it. I just say, do not do it now here in this context. If you have already decided one of the questions in this section, at least throw an express protection to one of the co-equal sections for the Attorney General to challenge it.

Mr. BAKER. Mr. President, I rise to put a question or two as to the legal consequences of the second amendment, as to what the amendment of the Senator from West Virginia and the Senator from Michigan provide. But before that, I should like to express a personal opinion, that I do not believe the sponsors of the bill have said that either one of the amendments adds or detracts one whit from the effectiveness of section 904. I would ask particularly with reference to the amendment in the nature of a substitute, as I understand it, as offered by the distinguished Senator from Michigan.

Mr. GRIFFIN. My amendment is to the

amendment of the Senator from West Virginia. Thus, his language would be retained with the additional language of my amendment.

Mr. BAKER. Very good. The amendment to the amendment of the distinguished Senator from Michigan provides that if a holding of the Comptroller General as contemplated by section 904, is contrary to the opinion of the Attorney General and because there is precedent that there would be a contrary opinion by two agencies, then, in that event, then this is reviewable according to the provisions of title 5, section 705 of the United States Code.

My question is: Have we not limited rather than expanded the course of judicial review by both amendments?

Mr. GRIFFIN. I think my answer to that question was already given that it is not a substitute but an amendment to the amendment of the Senator from West Virginia. The Senator from West Virginia, by his language, preserves whatever judicial review now exists—whatever that may be.

However, in the event there is a conflict between the holding of the Comptroller General and the Attorney General, my amendment makes it clear that a right of review exists in that situation.

Mr. BAKER. The amendment to the amendment, as proposed by the Senator from Michigan, provides that "if the holding of the Comptroller General is contrary to the opinion of the Attorney General." Might I ask if the effect would be equally applicable in different circumstances, especially if the holding of the Attorney General were contrary to a later filed opinion by the Comptroller General; namely, the opposite situation of that literally described in the amendment?

Mr. GRIFFIN. Well, as I understand it, so long as the Attorney General's opinion conflicts with an opinion of the Comptroller General, it would be reviewable under my amendment.

Mr. BAKER. Would it not be a broader guarantee of the right to appeal if we did not include these two conditions precedent, that there be a dispute between the Comptroller General and the Attorney General, so that we are limited to this section of the code rather than to the section of the code which guarantees due process?

Mr. GRIFFIN. I think the Senator might have a good point if I had offered it as a substitute. But as it is not a substitute, we are not taking away anything that now exists but are only adding an additional opportunity for review.

Mr. BAKER. If I could make this additional point, and then I would be happy to conclude this colloquy with my thanks to the Senator from Michigan. I have no desire to oppose either the amendment to the amendment, but I reiterate that I frankly think they add or detract little if anything from the substance and effect of section 904.

However, I would ask if it might not be appropriate to consider modifying the language of the amendment to the amendment so that the right of review is not limited to title 5, section 701, so that a dispute between the Comp-

troller General and the Attorney General is not condition precedent to the right of review.

Mr. GRIFFIN. Certainly such a modification would broaden the amendment, but accepting such a modification would be a decision for the Senate.

If I might just make one further point before yielding to the Senator from West Virginia (Mr. BYRD) and the Senator from Nebraska (Mr. HRUSKA) the able Senator from New York (Mr. JAVITS) put his finger on the point that in my opinion, is unanswerable. The language of section 904 is so broad as to make the Comptroller General's holdings determinative not only as to the executive branch but as to private parties as well.

Although there is a right of review for private parties, what is the scope of that right. The language of section 904, if enacted, would be the Congress last word on the subject.

If a contract or agreement was held by the Comptroller General of the United States to be in contravention of any Federal statute, the only question before a court under the language of section 904 would be simply what was the holding of the Comptroller General of the United States? If he held that a contract or agreement was in contravention of Federal statute, the court might very well say, "We have reviewed the facts of this case and find that the Comptroller General held that it was in contravention. As his ruling is final, the appeal is denied."

Mr. HRUSKA and Mr. BYRD of West Virginia addressed the Chair.

Mr. GRIFFIN. I do not know which Senator to yield to first. But I shall yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, what the Senator from Michigan has just said is pure sophistry, and I should like to describe it in that way, because the amendments were clarified in conference especially as to review and what the authority was that was vested in the Comptroller General. These things are, therefore, now legislated. There is nothing in the amendment, nor in the law, which puts the Comptroller General over the decision of any court, from the act of 1921 and followed ever since then. It has served its purpose well. It is not the holding of the Comptroller General which is binding upon the courts. It is the holding of the Attorney General that is binding upon the executive department, until the court gets hold of it through a private litigant, which is the only way Congress can assure itself of having its power eroded away by the executive department.

Now then, the Senator from Michigan, as I understood the amendment, said that his amendment does not change anything from what now prevails. If that is the extent of the description he would like to hold onto, I would respectfully call his attention to this fact: That the Comptroller General has to be represented by the Attorney General. That is the only way he can get into court. The amendment of the Senator from Michigan poses this very interesting spectacle. Here would be one holding of the Attorney General, and on the same subject a

totally 180-degree angle difference by the Comptroller General.

So what would we have? We would have the suit referred to a Federal district court for review, and the one who would represent the Government in that case would be the Attorney General, and the one who would represent the Comptroller General in that suit would be the Attorney General, and I think the only thing that would be the ultimate would be to make him the judge, too, so we could have all the proceedings in that one room and justice would be done. What a travesty.

The point of the argument is that not only is it ludicrous, but it is a great and tremendous change from what we have had.

It should be clear that section 904 does not give authority to the Comptroller General to override any such act. In fact, the amendment to the amendment of the Senator from West Virginia puts on track all over again that the 1921 Budget and Accounting Act remains intact and complete, as it has been since 1921; and it has a pretty good record.

Mr. GRIFFIN. Mr. President, it is my understand that this amendment was drafted in the office of the Attorney General. I am pleased to be advocating his case for he is a good lawyer. This amendment—or a similar amendment—is an absolutely necessary addition to the legislation now before the Senate.

I yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I merely wanted to ask the able Senator the question as to who, in his opinion, would represent the Comptroller General if such a situation arose as described in the amendment to the amendment. The able Senator from Nebraska answered the question, because Congress has authorized only the Department of Justice and a few other agencies to handle legislation involving the United States. The Comptroller General has not been granted this authority. As a result, in any case involving one of the Comptroller General's decisions, in any case in which one of the decisions goes to court, the Comptroller General must be represented by the Attorney General. Obviously, where there is a difference between the Comptroller General and the Attorney General, certainly the view of the Comptroller General would not be advocated by the Attorney General.

So I ask the question, Who would represent the Comptroller General in the event of a suit by the Attorney General?

Mr. GRIFFIN. The Senator from West Virginia raises substantially the same question as the Senator from Nebraska. It is not unique to have differences of opinion arise among or between branches of our Government. Although it is true that the Attorney General usually represents agencies of the Government and indeed in some cases, the Congress, or the committees of Congress, this is not necessarily the case.

It is my understanding that the Comptroller General is primarily an arm

of the legislative branch, and, as such, is separate and distinct from the executive branch. In such a situation, it is not necessary that in every situation the Attorney General represent him where a conflict exists between the Comptroller and a branch of the Government.

It would be entirely appropriate for the Congress, confronted with such a case, to provide representation for the Comptroller General. Congress could take whatever action was necessary to assure proper representation of what is essentially an arm of the Legislature.

That would be the way it should be done—and the way it would be done if this amendment were adopted.

Mr. ERVIN. Mr. President, I would like to ask the Senator from Michigan a question.

Mr. GRIFFIN. I am glad to yield.

Mr. ERVIN. Does the Senator from Michigan agree with the Senator from North Carolina that the Comptroller General is an agent of the Congress?

Mr. GRIFFIN. That is my understanding.

Mr. ERVIN. So if the amendment of the Senator from Michigan were adopted, it would be, in effect, the Attorney General suing the Congress of the United States for the purpose of making an agent of the Congress do differently?

Mr. GRIFFIN. In such a case, the question would be the meaning of the particular statutes passed by the Congress. It is not unusual that such decisions pertaining to the meaning of legislation would ultimately be made by the courts.

After all, the courts are established to determine the meaning of the acts of Congress and to resolve conflicts.

Mr. ERVIN. Will the Senator yield further?

Mr. GRIFFIN. I yield.

Mr. ERVIN. If a ruling of the Comptroller General were contrary to the congressional content, the orderly remedy would be for somebody to introduce a bill in the House or a bill in the Senate to change the law on which the Comptroller General made his ruling, rather than give the Attorney General power to bring a lawsuit against the Comptroller General, who is required to pass on the legality of every Federal expenditure, in every case where the Comptroller General is either authorized by the Attorney General or forbidden by the Attorney General. It would be unseemly for one branch of the Government to be suing the other all the time.

Mr. GRIFFIN. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. BYRD of West Virginia. Mr. President, I ask this question before the yeas and nays are called. If the amendment to the amendment offered by the able Senator from Michigan (Mr. GRIFFIN) is voted down, the vote would then recur on my amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAYH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAYH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the amendment offered by the Senator from Michigan to the amendment of the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I move to lay on the table the amendment to the amendment offered by the able Senator from Michigan.

Mr. WILLIAMS of Delaware. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Michigan to the amendment of the Senator from West Virginia. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HARTKE (when his name was called). Mr. President, on this vote I have a pair with the Senator from South Carolina (Mr. HOLLINGS). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

The rollcall was concluded.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUE), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON) and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Oregon (Mr. PACKWOOD) is detained on official business.

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Illinois (Mr. PERCY). If present and voting, the Senator from Texas would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 53, nays 35, as follows:

[No. 260 Leg.]

YEAS—53

Alken	Ellender	Murphy
Allen	Ervin	Pearson
Allott	Fannin	Prouty
Baker	Fulbright	Proxmire
Bennett	Goldwater	Randolph
Bible	Gurney	Saxbe
Burdick	Hansen	Smith, Maine
Byrd, Va.	Holland	Sparkman
Byrd, W. Va.	Hruska	Spong
Cannon	Hughes	Stennis
Church	Jordan, N.C.	Stevens
Cook	Jordan, Idaho	Talmadge
Cotton	Long	Thurmond
Curtis	Mansfield	Williams, Del.
Dodd	McClellan	Yarborough
Dole	McIntyre	Young, N. Dak.
Dominick	Metcalf	Young, Ohio
Eastland	Moss	

NAYS—35

Bayh	Harris	Mondale
Bellmon	Hart	Montoya
Boggs	Hatfield	Muskie
Brooke	Jackson	Nelson
Case	Javits	Pastore
Cranston	Kennedy	Pell
Eagleton	Magnuson	Ribicoff
Fong	Mathias	Schweiker
Goodell	McCarthy	Scott
Gore	McGee	Smith, Ill.
Gravel	McGovern	Williams, N.J.
Griffin	Miller	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Hartke, against.

NOT VOTING—11

Anderson	Mundt	Symington
Cooper	Packwood	Tower
Hollings	Percy	Tydings
Inouye	Russell	

So the motion to lay on the table was agreed to.

Mr. BYRD of West Virginia. Mr. President, the vote now recurs on the amendment which I offered. And I am willing to have a voice vote on the amendment if there are no further efforts to amend it.

Mr. JAVITS. Mr. President, I have an amendment to the amendment. It reads as follows:

Strike out the period at the end and add: "and actions hereunder shall be subject to judicial review as provided by Chapter 7 of Title 5 of the U.S. Code."

I shall complete my argument in 2 minutes.

Chapter 7 of title 5 of the United States Code gives the right of judicial review to any person aggrieved.

Mr. President, let us bear in mind that the whole problem is a very new impression. It just really happened here. And everyone seems to agree that they do not want the Comptroller General to be out from under the courts if he is going to function. This is not in the House bill. It will give all concerned an opportunity creatively to examine it to see that the right of judicial review is really preserved.

My information is—and I represent to the Senate that it is solely information, no research or anything else, because we cannot do it in the time available—that not every action of the Comptroller General can be reviewed. The parties are not eligible to sue. And there are certain problems, even before the Court of Claims, and I cannot represent to the Senate what they are. But they do bear upon the fact that the amendment of the Senator from West Virginia proceeds on the assumption that there is jurisdiction now, because he says that the exemption is not limited. He says there is jurisdiction. I do not know what it is, and I doubt that anyone will tell us within the time compass we have.

I hope that for the purpose of a creative action here that he will take it to conference and that the Senator might consider accepting the concept and principle that what we are after is that the Comptroller General's word on this shall be subject to court review. I could be wrong, but I have tried to ask the Senator to accept that principle. Perhaps in a conference this thing can be articulated in a sensible way.

Mr. SCOTT. Mr. President, I think the Senate has shown its concern that the function of the Comptroller General shall not be impaired. It has exhibited an awareness of its investment in the independence of the Comptroller General. And this has now been made abundantly manifest, no matter how individual Senators may have voted.

At the same time there underlies the concern of the Attorney General and of the Secretary of Labor in the continuance of the process of negotiation and agreement, because these methods in the American system are superior to the great danger and the immense risk involved in the frustration of any section or sector of the American people which might turn them into the streets, or it might lead them to fear that the functioning of our judicial procedure is inadequate to protect their concern for their right to employment and equal employment under the law. The last thing I want to see in America is people to think that the laws are not adequate, that the protection of the law has failed them, and that, therefore, there remains for them only this dreadful arbitrament of confrontation through violence.

In order to avoid that, I think this is our last best chance, as offered by the Senator from New York, to at least indicate that now that we have worked our will, we have exhibited our confidence in the Comptroller General, and we have said that we do not want his prerogatives impinged or derogated, we can at least say that the functioning of lawful procedures, including the rights of review and appeal, shall be preserved as they are in other instances under the United States Code. And that is all I understand the Senator from New York is proposing. He is simply suggesting that a right of review exists.

Bearing in mind that this goes to conference, I think it will be very helpful if the distinguished Senator from West Virginia could bring himself to accept this amendment. It would be very helpful in securing a final and reasonable conclusion of the conferees of the two Houses, that the right to review at least be secured.

For that reason, I support the suggestion and the amendment of the Senator from New York.

Mr. HOLLAND addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. HOLLAND. Mr. President, this would constitute a very real departure from the law. The law not only provides that the decision of the General Accounting Office shall be "final and conclusive upon the executive branch of the Government," but also, it has this additional provision:

Except that any person whose accounts may have been settled, the head of the executive department or of the board, commission, or establishment not under the jurisdiction of the executive department to which the account pertains, or the Comptroller General of the United States, may, within a year, obtain a revision of said account by the Comptroller General of the United States, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government.

Mr. President, anybody who is affected by the GAO order has this right of appeal already under this provision. He has it for a year, and the decision of the Comptroller General in this case, as in the original case, is final and conclusive upon the executive branch of the Government, but only upon the executive branch of the Government. It does not preclude anybody from going to court. They have gone to court in repeated instances.

The provision offered by the Senator from New York offers a different kind of review, a review by the court, which is completely inconsistent with the provisions of the 1921 act, which already provides for a review, but with the same provisions that are applicable in the original case, that the decision of the Comptroller General shall be—I quote again:

Whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government.

Mr. President, the 1921 act was a very carefully drawn, carefully worked out effort to prevent a clash between the legislative branch, represented by the Comptroller General, and the Executive Department; and to leave control of these decisions in one who represents the legislative branch, which alone has the power to make appropriations.

The amendment suggested by the Senator from New York would completely change that picture and would instead throw any decision of the GAO upon anybody's complaints, whether Executive or otherwise, into a court for review.

Personally, I do not want to give up any of the vital portions of the 1921 act. I think they have been very salutary. I think they have preserved the independence of Congress in the field of appropriations and seeing through to the proper use of those appropriations, and the amendment of the Senator from New York would bring about a completely different result.

Mr. President, I would not want to see us depart from the present law in that very vital regard, and that is exactly what the Senator from New York proposes in his amendment.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I am ready for a vote on the modifying language offered by the able Senator from New York. I am opposed to the language and I am ready for a vote. I had hoped to arrive at some language which we could accept but the amendment by Mr. JAVITS would place the Comptroller General under the Administrative Procedures Act, and we cannot accept this.

Mr. JAVITS. Mr. President, I ask for the yeas and nays?

The yeas and nays were ordered.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment of the Senator from New York. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. **RIBICOFF** (after having voted in the affirmative). Mr. President, I have a pair with the distinguished Senator from Georgia (Mr. **RUSSELL**). If he were present and voting he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withdraw my vote.

Mr. **MAGNUSON** (after having voted in the affirmative). Mr. President, on this vote I have a pair with the Senator from South Carolina (Mr. **HOLLINGS**). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." I withdraw my vote.

Mr. **KENNEDY**. I announce that the Senator from New Mexico (Mr. **ANDERSON**), the Senator from South Carolina (Mr. **HOLLINGS**), the Senator from Hawaii (Mr. **INOUE**), the Senator from Minnesota (Mr. **MCCARTHY**), the Senator from Georgia (Mr. **RUSSELL**), the Senator from Missouri (Mr. **SYMINGTON**), and the Senator from Maryland (Mr. **TYDINGS**), are necessarily absent.

Mr. **GRIFFIN**. I announce that the Senator from Kentucky (Mr. **COOPER**) is absent because of illness in his family.

The Senator from South Dakota (Mr. **MUNDT**) is absent because of illness.

The Senator from Illinois (Mr. **PERCY**) and the Senator from Texas (Mr. **TOWER**) are necessarily absent.

The Senator from Utah (Mr. **BENNETT**), the Senator from Oregon (Mr. **PACKWOOD**), and the Senator from Illinois (Mr. **SMITH**) are detained on official business.

If present and voting, the Senator from Illinois (Mr. **PERCY**) would vote "yea."

On this vote, the Senator from Illinois (Mr. **SMITH**) is paired with the Senator from Texas (Mr. **TOWER**). If present and voting, the Senator from Illinois would vote "yea," and the Senator from Texas would vote "nay."

The result was announced—yeas 40, nays 44, as follows:

[No. 261 Leg.]

YEAS—40

Bayh	Harris	Montoya
Bellmon	Hart	Moss
Boggs	Hartke	Muskie
Brooke	Hatfield	Nelson
Case	Hughes	Pastore
Church	Jackson	Pearson
Cook	Javits	Pell
Cranston	Jordan, Idaho	Schweiker
Dole	Kennedy	Scott
Eagleton	Mathias	Stevens
Fong	McGee	Williams, N.J.
Goodell	McGovern	Yarborough
Gravel	Miller	
Griffin	Mondale	

NAYS—44

Alken	Ervin	Murphy
Allen	Fannin	Prouty
Allott	Fulbright	Proxmire
Baker	Goldwater	Randolph
Bible	Gore	Saxbe
Burdick	Gurney	Smith, Maine
Byrd, Va.	Hansen	Sparkman
Byrd, W. Va.	Holland	Spong
Cannon	Hruska	Stennis
Cotton	Jordan, N.C.	Talmadge
Curtis	Long	Thurmond
Dodd	Mansfield	Williams, Del.
Dominick	McClellan	Young, N. Dak.
Eastland	McIntyre	Young, Ohio
Ellender	Metcalf	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Magnuson, for.
Ribicoff, for.

NOT VOTING—14

Anderson	McCarthy	Smith, Ill.
Bennett	Mundt	Symington
Cooper	Packwood	Tower
Hollings	Percy	Tydings
Inouye	Russell	

So Mr. **JAVITS'** amendment was rejected.

Mr. **BYRD** of West Virginia. Mr. President, the vote now recurs on my amendment. I am willing to accept a voice vote on it.

Mr. **PASTORE**. Mr. President, I think, in view of the modification of the language that was reported by the committee, which is an improvement on it, we should have a recording of it and I, therefore, ask for the yeas and nays.

The yeas and nays were ordered.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment of the Senator from West Virginia.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. **KENNEDY**. I announce that the Senator from New Mexico (Mr. **ANDERSON**), the Senator from South Carolina (Mr. **HOLLINGS**), the Senator from Hawaii (Mr. **INOUE**), the Senator from Minnesota (Mr. **MCCARTHY**), the Senator from Georgia (Mr. **RUSSELL**), the Senator from Missouri (Mr. **SYMINGTON**), and the Senator from Maryland (Mr. **TYDINGS**) are necessarily absent.

Mr. **GRIFFIN**. I announce that the Senator from Kentucky (Mr. **COOPER**) is absent because of illness in his family.

The Senator from South Dakota (Mr. **MUNDT**) is absent because of illness.

The Senator from Illinois (Mr. **PERCY**) and the Senator from Texas (Mr. **TOWER**) are necessarily absent.

The Senator from Utah (Mr. **BENNETT**), the Senator from Illinois (Mr. **SMITH**) and the Senator from Oregon (Mr. **PACKWOOD**) are detained on official business.

If present and voting, the Senator from Illinois (Mr. **PERCY**) would vote "nay."

On this vote, the Senator from Texas (Mr. **TOWER**) is paired with the Senator from Illinois (Mr. **SMITH**). If present and voting, the Senator from Texas would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 73, nays 13, as follows:

[No. 262 Leg.]

YEAS—73

Aiken	Dominick	Jordan, Idaho
Allen	Eagleton	Kennedy
Allott	Eastland	Long
Baker	Ellender	Magnuson
Bayh	Ervin	Mansfield
Bellmon	Fannin	McClellan
Bible	Fong	McGee
Boggs	Fulbright	McGovern
Brooke	Goldwater	McIntyre
Burdick	Gore	Metcalf
Byrd, Va.	Gravel	Miller
Byrd, W. Va.	Gurney	Mondale
Cannon	Hansen	Montoya
Church	Hart	Moss
Cook	Holland	Murphy
Cotton	Hruska	Muskie
Curtis	Hughes	Pastore
Dodd	Jackson	Pearson
Dole	Jordan, N.C.	Pell

Prouty
Proxmire
Randolph
Saxbe
Smith, Maine
Sparkman

Spong
Stennis
Stevens
Talmadge
Thurmond
Williams, N.J.

Williams, Del.
Yarborough
Young, N. Dak.
Young, Ohio

NAYS—13

Case
Cranston
Goodell
Griffin
Harris

Hartke
Hatfield
Javits
Mathias
Nelson

Ribicoff
Schweiker
Scott

NOT VOTING—14

Anderson
Bennett
Cooper
Hollings
Inouye

McCarthy
Mundt
Packwood
Percy
Russell

Smith, Ill.
Symington
Tower
Tydings

So the amendment of Mr. **BYRD** of West Virginia was agreed to.

Mr. **JAVITS**. Mr. President, I should like, for the information of the Senate, just to state that I think we have fought as hard as we can within this frame of reference at this time, on what I think was a very important issue, an issue which I think the President feels very strongly about. As I stated in the course of the debate, I feel that we have had a fair and square effort in every way, by attempted amendment. The first vote was essentially a strike-out vote to test this issue. The result of that vote was obviously the will of the Senate, and I do not propose to delay the Senate any further with another motion to strike, or all the things that might be done. I feel that after all these rollcalls, we know what the Senate wants.

I can only hope—and I speak only as an American now, not even as a Senator—that the sponsors of the bill, the manager, and the minority and majority conferees will look at this thing and really think it through. I think we are doing a most unwise and improvident thing, in a most unwise and improvident way.

It is my duty to say that, and I let the matter rest there.

Mr. **BYRD** of West Virginia. Mr. President, I thank the Senator. I appreciate his letting Senators know that they can depend on no further argument, debate, or votes on this particular controversial issue.

I think, now, that we might get on with the discussion of the money amendments. If there are any to be offered by any Senators, I shall be happy to discuss money amendments now, after which we ought to have a rollcall vote on final passage.

Mr. **HARRIS**. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The **PRESIDING OFFICER**. The amendment will be stated.

The legislative clerk read the amendment, as follows:

On page 6, line 16, strike out the figure "\$1,000,000" and insert in lieu thereof "\$3,000,000".

Mr. **HARRIS**. Mr. President, I ask for the yeas and nays on the amendment.

Mr. **BYRD** of West Virginia. Mr. President, will the Senator wait for that? We might be able to accept his amendment, and avoid having the yeas and nays.

Mr. **HARRIS**. Mr. President, I shall, I think, ask for the yeas and nays, but I shall not do it right this minute.

Mr. President, this amendment is a very simple one. I think it is one that Senators will wish to support. It would increase the supplemental appropriation for Indian health services by \$2 million. This increase would be for what is commonly referred to as direct care and would be consistent with the \$1 million increase recommended by the Committee on Appropriations for contract care.

The \$2 million would be used to provide, for 300 additional hospital personnel at a cost of approximately \$1,720,000; for additional supplies and materials costing \$200,000; and for additional equipment at a cost of \$80,000.

The need for this increase in the supplemental appropriation is overwhelming. It is estimated that in order to meet the staffing requirements for Indian hospital facilities that 225 to 250 employees per 100 average daily patients hospitalized and 120 employees per 100,000 outpatient visits are needed. The figures for 1968 show that the Indian Health Service was staffed with only 164 employees per 100 average daily patients and 47.8 employees per 100,000 outpatient visits, clearly below a suitable ratio of employees to patients.

Although the figures are shocking, what the figures actually mean to the Indian population is even more shocking. It is not uncommon in an Indian hospital to have one nurse responsible for more than one floor, with reliance often being placed upon members of a patient's family, untrained in medical care, to assist.

Nor is it uncommon for physicians in Indian hospitals to have a patient load far exceeding other physicians and for those physicians going to field stations or clinics to see as many as eighty patients a day.

By reason of a lack of funds, it is not uncommon for Indian patients who are seriously ill to be transported to an Indian hospital, or from one hospital to another in the back seat of an automobile rather than in an ambulance.

These incidents and many other equally shocking occurrences were reported to the Oklahoma congressional delegation by Indian leaders earlier this year. As a result of their report, Representatives Ed EDMONDSON and JOHN N. HAPPY CAMP on behalf of the House Committee on Interior and Insular Affairs inspected certain Indian hospitals in Oklahoma. A report prepared by Representative EDMONDSON dated October 11, 1969, sets forth what he and Representative CAMP discovered, and I ask unanimous consent that this report be printed in the RECORD at this point.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

REPORT ON CONGRESS

(By Representative Ed EDMONDSON)

OCTOBER 11, 1969.

WASHINGTON.—Inspections of three Oklahoma Indian hospitals operated by the United States Public Health Service have brought to light drastic shortages of medicine and medical supplies, confirming reports recently brought to Oklahoma's congressional delegation by Indian spokesmen.

Hospitals at Pawnee, Tahlequah and Claremore, although staffed by dedicated personnel who are reaching thousands of Indians

at clinics in addition to their hospital duties, are simply not receiving the funds essential to good health care for their patients.

These are the unavoidable conclusions from an unannounced inspection of the Claremore hospital which Congressman John N. Happy Camp and I made last week on behalf of the House Committee on Interior and Insular Affairs—followed by staff inspections of the Pawnee and Tahlequah facilities this week.

FUNDING SHORTAGES CRUCIAL

The story at each of these hospitals is basically the same. Funds are so short—with funding on a 30-day basis and requisitions for supplies and equipment often long delayed—that adequate medical treatment is sometimes impossible. Here are some of the glaring examples:

At Claremore, a posted "out list" for use by doctors and nurses includes such basic drugs as buffered aspirin, librium, and vasodilan. Vitamin supplies were depleted and food purchases cut so deeply that nutritious diet for patients is actually in danger. Services of expert consultants in difficult cases have been drastically curtailed.

At Pawnee, tests for tuberculosis have been discontinued because necessary supplies are not provided; influenza shots cannot be given to more than 600 Indian students at Chilocco School because the vaccine is not available.

At Tahlequah, essential anti-biotics are "low in supply" or "out". The same can be said for certain anaesthetics, IV sets for intravenous fluids, and other surgical supplies. No immunization shots are being given more than 400 Indian students at Sequoyah school because of shortages.

PROBLEM CLEARLY DEFINED

The blame for these conditions is squarely on the shoulders of the federal government which has long assumed major responsibility for Indian health both by law and treaty. Congress has failed to appropriate adequate funds to meet rising hospital and drug costs, and administrative spending ceilings have reduced available funds even further.

The situation is so bad currently that these hospitals are being financed on a month-to-month basis. As of October 6 and 7 when the hospitals were visited, October funding allocations had not been received. Missing drugs cannot be replaced until the allocation is received, and then if history is any indication, there will not be enough money for full replacement.

At Tahlequah, for instance, more than \$15,000 in drugs were dispensed in August and September. Only \$5,400 was allocated for drug purchase during the same period. At this rate, this hospital will for all practical purposes, be out of medicine within 60 days.

FACILITIES SHAMEFUL

The problem goes deeper than drug and operating fund shortages, which can be corrected by Congress in short order if it is the will of Congress to do so. Major expenditures must be made to replace and remodel the hospitals themselves. Funds must be committed for future years.

The Claremore hospital is not accredited. Accreditation was denied in 1960 with the comment that the hospital is "a hazardous, dangerous building and should not house hospital inpatients." Provisional accreditation was awarded in 1967 because a new building was being planned. This was withdrawn last February.

Tahlequah may be in its last year of accredited status. Several dangerous conditions exist at the hospital, any one of which is sufficient to deny accreditation. The hospital was accredited last year only because plans to correct the problems were on the drawing board. The funding situation this year is such that the hospital cannot in good faith offer hope of early improvement.

ADVISORY GROUP REPORT

These hospitals are staffed and operated by the Indian Health Service of the United States Public Health Service. The doctors, nurses, and administrators are doing a first-rate job within the limitations imposed on them. They must, however, wonder how the PHS can tolerate such conditions in facilities of its own.

The inspection trip came as a result of an eloquent plea delivered to the Oklahoma Congressional delegation last month by the Oklahoma City Area Advisory Board, Indian Health Service.

This group of tribal leaders brought to Washington a story of inadequacy and dangerous drug and equipment shortages. Our field inspection of three hospitals confirmed their story.

WHAT CAN BE DONE?

Congressman Camp and I have reported our findings to Chairman Wayne Aspinall of the House Committee on Interior and Insular Affairs, and Chairman James Haley of the Indian Affairs Subcommittee.

Steps are being taken to determine how much money is needed immediately to alleviate the current drug and equipment crisis, and how quickly Congressional action appropriating these funds can be taken.

We are also exploring the needs for fiscal year 1971 and subsequent years, and the Area Advisory Group has indicated it will return to Washington to make its plea early next year before the Appropriations Committees in the House and Senate.

We are hopeful administration ceilings on essential expenditures at these and other Indian hospitals will be revised upward without delay, to meet the actual crisis now in prospect.

Mr. MURPHY. Mr. President, will the Senator yield?

Mr. HARRIS. I am happy to yield to the Senator from California.

Mr. MURPHY. I inquire of the Senator, is some of this money to be used for badly needed care of California's rural health demonstration project which is about to run out of money?

Mr. HARRIS. Exactly so. This amendment would add an additional \$2 million to an item for which \$1 million is presently provided, which would be available for Indian health services all over the country.

I have only very brief remaining remarks, which I think will explain the situation clearly to the Senator and to the Senate.

The report confirmed the earlier report of the Indian leaders that such basic drugs as buffered aspirin, librium, and vasodilan were not available in one hospital and that the same hospital was short of drugs for the treatment of diabetes.

It is inconceivable that needed immunization shots were denied to some 1,000 Indian children in the State of Oklahoma alone because of a shortage of drugs.

Representatives EDMONDSON and CAMP, during their inspection of the Claremore Indian hospital, obtained a list of the drugs that the hospital was either "out of" or "short of."

I think Senators would be appalled to see this list of basic drugs that this hospital, a very important Indian hospital in northeastern Oklahoma, was either "out of" or "short of," and I ask unanimous consent that the list be printed in the RECORD at this point.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

Doctors.—Below are items we are out of or short of. They are so labeled (available—suggested). Substitutes are listed adjacent to item.

Fulvillin (out).
Mylanta (out), possible substitute, AMT Tablets.
Librium 10 mg, (out), possible substitute, Pb 32 mg, Stelazine, Meproamate, Thorazine.
Chewable Vitamins (out).
Phisohex 120 cc and gallon, (out).
Penobarb ½ gr (out).
Cortisporin Otic, (short) (found some!)
Darvon 65 mg, (out), possible substitute, Aspirin, (headache) Fiorinal
Actifed, (out), possible substitute, Pseudophed Tabs liquid.
Vasodilan Tabs, (out), possible substitute, Nicotinic Acid.
Buffered Aspirin, (out), possible substitute, Plain ASA.
Ampicillin suspension, (short), possible substitute, plenty—penicillin suspension.
Ampicillin I.V. (500 mg) (out).
Dilantin 100 mg capsules, (short).
Ampicillin 250 mg capsules, (short).
Gantrisin Tablets, (short), possible substitute, (We have plenty Triple sulfa tabs, liquid).
Diabinese Tablets, (short).
Ferrous Sulfate Tabs, (short).
Hydrocortisone Ointment, (short).
Kaopectate, (short).

Mr. HARRIS. Based upon information gained of the Indian health situation in Oklahoma and other information which the Indian Health Service has on health needs in other States, it is obvious that additional funds are needed.

In order to reverse the downward trend in program levels and make some inroad into the unmet health requirements of the Indian people, it is estimated that 300 positions need to be added in fiscal year 1970, together with additional funds required for supplies and equipment.

The health needs of the Indian in this Nation are crucial. An additional appropriation of \$2 million will help eliminate the seriousness of the present situation, and is a minimum step which we should take. I think it is unfortunate that this sum is not more as well as the additional amount for contract needs. The report of the committee indicates that the current available appropriation is sufficient only to provide for two-thirds of known needs. With the increase in costs of providing medical care, the increase I am requesting, as well as the one provided by the committee, will do little more than let us operate at the present level, which is clearly inadequate. I therefore urge the adoption of my amendment.

Mr. MURPHY. Mr. President, will the Senator yield?

Mr. HARRIS. I yield.

Mr. MURPHY. Mr. President, I ask the permission of my distinguished friend, the Senator from Oklahoma, that I may join him as a cosponsor of his amendment.

Mr. HARRIS. Mr. President, I ask unanimous consent that the names of Senators BURDICK, HANSEN, CANNON, HATFIELD, STEVENS, MONTOYA, WILLIAMS of New Jersey, BAYH, McGOVERN, and

MURPHY may be added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURPHY. Mr. President, I know of the Indian program in California. It is an excellent program. It is badly in need.

Mr. President, I am pleased to cosponsor and support this amendment adding \$2 million to Indian Health Services, of the Department of Health, Education, and Welfare. This amendment is of great interest to me for California has the second largest Indian population in the Nation. One-sixth of the total Indian population in the country resides in my State, and they represent the State's fastest-growing minority. It has been estimated that California's Indian population doubled between 1950 and 1960, from 19,947 to 39,017. It is estimated that at present there are 100,000 or more Indians in California, and this represents an increase of 150 percent over the 1960 census count. My city of Los Angeles has been called, because of its large Indian population, the Indian capital of the world.

California Indians, in general, for the last decade, have not been able to participate in Federal programs for Indians. Beginning in the early 1950's a movement developed to terminate the special relationship and the special programs of the Federal Government for Indians. As a result, California Indians, since 1955, have been denied health services and since 1958, the benefit of Federal Indian education programs.

As a member of the Senate Labor and Public Welfare Subcommittee on Indian Education, I am aware of the great needs of the California Indians. In testimony before the subcommittee I have strongly urged the restoration to California Indians of Johnson-O'Malley education funds. The subcommittee is presently in the process of drafting its recommendations and I am confident that my recommendation will be included in the committee's final report.

In the health area, California Indians, as I previously mentioned, were terminated from Federal health services in 1955. Mr. President, as this body well knows, the Federal Government has not terminated its special relations with the American Indians, nor should they. In fact, as appropriations and programs reveal, the reverse is true. The Federal Government is becoming involved in assisting Indian reservations in long-range economic development. Federal appropriations for health and other programs for Indians have increased. For example, the appropriation for Indian health in 1954-55 was \$25 million. In 1969-70, this sum reached \$100 million. Yet, Mr. President, with one-sixth of the Indian population of the country, California Indians receive none of these funds. If California Indians were to receive a proportionate share of Federal Indian health funds, based on the percentage of funds they received prior to termination, California's share would be \$15 million. What is the equity of such a policy? There is none.

In 1967, the bureau of maternal and

child health, of the California State Health Department, undertook a pilot project designed to improve Indian health. A commitment of \$150,000 was made to the State department by the Public Health Service of the Department of Health, Education, and Welfare. At Governor Reagan's request, nine areas were surveyed and four were to be selected to participate. But the survey found that all nine wanted to participate and that there was a great need for such a program in all nine areas. As a result, the State of California requested additional funds so as to include all the areas. The request was approved and they secured a 1-year, \$245,000 grant. The Public Health Service gave the State additional funds to continue the program until June 30, 1969. Thus, the State has received a total of \$330,000 over 18 months for demonstration projects in each of the rural Indian reservation areas. The objectives of the program are community health education and the better utilization of existing health facilities. The projects, which is administered by the tribal council on subcontracts from the California Department of Public Health, have been successful in obtaining health coverage for many Indians not previously covered, in securing valuable assistance from the medical community and have been of help in other Indian-sponsored community organization projects. The projects have received almost unanimous support from groups and organizations in California which are interested and active in Indian matters.

Mr. President, there is no question there is great need for health services by California Indians. Since 1955, the health of California Indians has deteriorated in communicable diseases as well as chronic diseases. The death rate for influenza and pneumonia is twice that of the total population; tuberculosis, six times; accidents, four times; and cirrhosis of the liver, four times. Indian mothers fail to receive adequate prenatal care and their life expectancy is 20 years less than the average for all Californians. Seventy percent of the California Indian families, with an average size of six persons, earn less than \$3,000 annually.

Mr. President, the health status of the Indian in California indicates a need for participation in the Federal programs. The California rural Indian health demonstration projects have been successful, have been instrumental in saving several lives by helping people who need assistance on a timely basis, and have conducted successful health educational campaigns. Therefore, I strongly urge the Senate to allow this program to continue. The need is there, the program is working, and equity demands that California Indians be allowed to continue this rural health projects. It would be indeed unfortunate if their projects were not continued. There has been a good response in the Indian community to them and a good rapport developed between the Indians and public and private agencies. Dr. George C. Cunningham, in a letter to me, put it this way:

The urgency of this case in my mind stems from the fact that governmental and private agencies working with the Indians have lacked consistency, integrity and continuity. Having overcome the initial skepticism of the Indian communities and won their confidence, we would have a real problem restoring services if there was any hiatus of funding.

Thus, I urge the Senate to adopt the amendment, and I hope this will enable the funding of the much needed and successful California rural health project. As I understand it, about \$300,000 is needed for this California project. As I understand it, about with Governor Reagan and me, sent Mr. Forrest Gerard to examine this project. His report was most glowing and laudatory and those additional funds will help make available the funds for the California rural health demonstration project.

Mr. HARRIS. Mr. President, I am very grateful to the Senator from California. The amendment would add \$2 million for Indian health services all over America, including the State of California.

Mr. President, I yield to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. MONTOYA. Mr. President, I commend the Senator from Oklahoma for taking the lead in this particular matter of providing money for health care for the American Indian.

I happen to serve on the Appropriations Subcommittee for the Department of the Interior and Related Agencies which handles health care for American Indians. We provided an increase this year.

I felt at that time, however, that the increase we provided was not adequate enough. A few days ago, I had a visit from the Governor of Acoma Pueblo in New Mexico. And he and his delegation apprised me of the great need for health care in the Acoma Reservation.

This is something that is sorely needed not only in Oklahoma and New Mexico, but also all over the country.

The Indian is the forgotten individual in this country healthwise. His life expectancy, according to the last figures, is about 49 years, whereas other Americans have a life expectancy of close to 70 years at the present time.

I think it is about time that we in Congress take full cognizance of our responsibility to the American Indian.

I think the amendment offered by the Senator from Oklahoma will render a great public service. I think it will provide sorely needed health care all over the country.

I know that the Senate has been sympathetic to the American Indian. However, sometimes we get buried in fiscal figures which are involved in appropriations and we do not meditate over the great needs of the silent people of this country.

We do not do this willingly. However, the American Indian needs our help. And I think it is about time that we do something about it. I am not trying to cast any aspersions on my good friend, the Senator from West Virginia. I think my good friend, the Senator from West Vir-

ginia, is very sympathetic to the needs of all Americans.

I merely rise to commend the Senator from Oklahoma for taking the lead in securing this vitally needed appropriation of \$2 million additional for health care for the American Indian.

Mr. HARRIS. Mr. President, I appreciate very much the eloquent and influential words of my distinguished friend, the Senator from New Mexico who has such wonderful record in this field.

Mr. President, I yield to the distinguished Senator from Arizona who also has evidenced great concern in this area.

Mr. FANNIN. Mr. President, I thank the Senator from Oklahoma for yielding.

Mr. President, I have great concern for the Indian people all over the United States. I have visited Indian hospitals in the last few months.

Mr. President, I would like to recite a little story of a visit I made to an Indian hospital at Winslow, Ariz., 2 months ago. They did not have the needed facilities. They did not have the personnel. In fact, I was told that when they wanted to move a patient, they would call one of the officers in the police department to come up and assist them.

I checked to see why they would be so short of funds. I found that this was generally true in other Indian hospitals in Arizona. I think this is a very needed additional amount of money that should be appropriated for this just cause.

I wholeheartedly support the distinguished Senator from Arizona.

Mr. HARRIS. I am pleased to yield to the Senator from Wyoming.

Mr. HANSEN. Mr. President, I will take only a moment. I thank the distinguished Senator from Oklahoma for yielding.

I very much support the effort he is making. This will address itself to a very vital need in this country.

Mr. BYRD of West Virginia. Mr. President, the testimony during the hearings was to the effect that there has been a gradual increase each year over the last several years during which we have had a specific mental health program. It was indicated during the hearing that there was \$19 million in the regular bill and there would need to be an additional \$1 million included in order to bring the funding up to the fiscal year 1969 level.

Mr. President, the able Senator from Minnesota (Mr. MONDALE) had asked for an additional \$1 million. So, the subcommittee and the full committee accepted Mr. MONDALE's recommendation. And the bill therefore carries an additional \$1 million, to bring the funding up to the fiscal year 1969 level.

Mr. President, I think that the Senator from Oklahoma has made a very sound case for \$2 million in additional money.

I am happy to accept the amendment. The Senator has a right to ask for a rollcall vote if he wants to. Or perhaps other Senators would like to have one. However, I am happy to accept the amendment and will do the best I can to hold it in conference.

I would like to get by without a rollcall if we could in the interest of saving time. However, if the Senator wishes to have a rollcall vote, he may.

Mr. HARRIS. Mr. President, I am deeply grateful for what the Senator has said. Other Senators are interested in the amendment and would like to have a rollcall vote. I therefore ask for the yeas and nays.

The yeas and nays were ordered.

Mr. McGOVERN. Mr. President, I strongly support the proposal by the Senator from Oklahoma (Mr. HARRIS) to increase funds for Indian health services. No group of Americans is more urgently in need of improved medical care than the Indian citizens across the Nation. I know, as chairman of the Senate Subcommittee on Indian Affairs and as a lifelong South Dakotan, of the desperate physical plight of the Indian people.

Every additional dollar invested in improved medical care will be returned several times in the form of a healthier, stronger, and more creative citizenry.

I commend Senator HARRIS for his leadership in proposing this amendment to assist the American Indian.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Tennessee (Mr. BAKER), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Utah (Mr. BENNETT), the Senator from Oregon (Mr. PACKWOOD), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Illinois (Mr. SMITH) are detained on official business.

If present and voting, the Senator from Illinois (Mr. PERCY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 80, nays 0, as follows:

[No. 263 Leg.]

YEAS—80

Aiken	Brooke	Cook
Allen	Burdick	Cotton
Allott	Byrd, Va.	Cranston
Bayh	Byrd, W. Va.	Curtis
Bellmon	Cannon	Dodd
Bible	Case	Dole
Boggs	Church	Dominick

Eagleton	Javits	Pearson
Ellender	Jordan, N.C.	Pell
Ervin	Jordan, Idaho	Prouty
Fannin	Long	Proxmire
Fong	Magnuson	Randolph
Fulbright	Mansfield	Ribicoff
Goodell	Mathias	Saxbe
Gore	McClellan	Schweiker
Gravel	McGee	Scott
Griffin	McGovern	Smith, Maine
Gurney	McIntyre	Sparkman
Hansen	Metcalfe	Spong
Harris	Miller	Stennis
Hart	Mondale	Stevens
Hartke	Montoya	Talmadge
Hatfield	Moss	Thurmond
Holland	Murphy	Williams, N.J.
Hruska	Muskie	Williams, Del.
Hughes	Nelson	Young, N. Dak.
Jackson	Pastore	

NAYS—0

NOT VOTING—20

Anderson	Inouye	Smith, Ill.
Baker	Kennedy	Symington
Bennett	McCarthy	Tower
Cooper	Mundt	Tydings
Eastland	Packwood	Yarborough
Goldwater	Percy	Young, Ohio
Hollings	Russell	

So Mr. HARRIS' amendment was agreed to.

EFFICIENT AND EFFECTIVE USE OF REVOLVING FUND OF THE CIVIL SERVICE

Mr. McGEE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9233.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the amendment of the Senate to the bill (H.R. 9233) to amend title 5, United States Code, to promote the efficient and effective use of the revolving fund of the Civil Service Commission in connection with certain functions of the Commission and for other purposes, which was in the Senate amendment, strike out the following:

Sec. 3. Section 8340 of title 5, United States Code, is amended by adding the following at the end thereof:

"(g) Each annuity payable from the Fund based on involuntary separation and having a commencing date after November 1, 1969, but before January 2, 1970, shall be increased, from the commencing date of the annuity, by 5 percent."

Mr. McGEE. Mr. President, I move that the Senate concur in the House amendment to the Senate amendment extending to Civil Service retirement annuitants an increase from November 1, 1969, to January 2, 1970.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Wyoming.

The motion was agreed to.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate resumed the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. MANSFIELD. Mr. President, it is my understanding that there are one, two, or three amendments which will not take much time, after which we will vote on the pending bill. Then, it is the intention of the leadership to bring up

the conference report on the coal mine safety measure. Tomorrow we will take up the Department of Defense Appropriation conference report, the Tasca nomination, and other conference reports, as they become available.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield briefly?

Mr. MANSFIELD. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask for the yeas and nays on final passage so all Senators will know that there will be a record vote.

The yeas and nays were ordered.

ORDER FOR ADJOURNMENT TO 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, so that Senators will be aware of the time tomorrow, I ask unanimous consent that when the Senate completes its business tonight, it stand in adjournment until 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. The first order of business will be nominations on the calendar.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. DODD. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER (Mr. HART in the chair). The amendment will be stated.

The legislative clerk read as follows:

At the end of the provisions relating to the Department of State, add the following:

"ADMINISTRATION OF FOREIGN AFFAIRS SALARIES AND EXPENSES

"For an additional amount of 'Salaries and expenses, administration of foreign affairs,' \$310,000, to be made available only to the Passport Office, Bureau of Security and Consular Affairs, and any amount allocated to such office under the Department of State Appropriation Act, 1970, shall not be reduced as the result of the appropriation of this additional amount."

Mr. DODD. Mr. President, I can be very brief about this amendment because it is very simple. The amendment calls for an appropriation of \$310,000 for the Passport Office of the State Department. I can be very brief because there is no need for a long speech.

The head of that office, Miss Frances G. Knight, stated the facts all too clearly in a message which all of us received. It was sent to all Members of Congress and the distinguished Senator from New Hampshire (Mr. McINTYRE) had it printed in the RECORD yesterday.

As Miss Knight says:

The Passport Office ends 1969 in a bruised and battered condition, thanks to arbitrary budget cuts resulting in reduced personnel; lack of administrative support; lack of understanding of the changing travel patterns of U.S. citizens; and a total indifference to the predictable results of the forthcoming mass travel capability of the jumbo jets and the SST.

I cannot understand how we can spend taxpayers' money on a plethora of new programs and far-reaching activities yet fail to provide American taxpayers a service which is owed to them. The passport situation in my State is absolutely abominable. The clerks of court up there will no longer accept passport applications in many areas, which means most applicants have to go to Hartford.

But Connecticut is only one example. I suspect that my colleagues from Michigan and Texas know only too well the disastrous situation which exists in Detroit and in Dallas, Houston and Fort Worth when citizens try to secure passports. It is equally bad in Alaska and New York. Other States are more fortunate in having adequate personnel for the moment.

But, Mr. President, I stress the words "for the moment." If Frances Knight is correct, there may be long lines of people stretching across the country waiting to get their passports. This amendment which I submit is very simple. It will merely earmark sufficient funds for the Passport Office to insure that the American taxpayer will always be able to get his passport in timely fashion.

Miss Knight is known throughout the Government as one who runs an extraordinarily efficient office.

She is a dedicated public servant.

This Congress must not be the cause of terminating the good work being done in what is perhaps the only truly well run office in the whole Federal bureaucracy.

Furthermore, Mr. President, may I call the attention of my colleagues to the fact that the Passport Office is perhaps the only agency of the Federal Government which makes a profit on its yearly operations, a profit which is a savings to the taxpayer. In fiscal 1969, the budget for the Passport Office was \$5,676,132. The Passport Office brought into the U.S. Treasury \$16,550,703. This is a net profit of \$10,874,571.

Mr. President, the Passport Office needs \$310,000 in additional funds if it is to meet its obligations to the American taxpayer. We ask only \$310,000 for an agency which is bringing a profit to the taxpayers of some \$10.8 million.

I hope this amendment will be agreed to.

Mr. MURPHY. Mr. President, will the Senator yield?

Mr. DODD. I yield.

Mr. MURPHY. Mr. President, I am interested in the remarks of the distinguished Senator from Connecticut. I know something of this situation. In past years it has been my understanding that there is no department in the Government that has worked with greater efficiency than the Passport Office. I had great reason to deal with that office on many occasions in my former employment. I got to know the Director. I cannot understand why this office should be denied the funds necessary to carry on a job which has been doing such an outstanding job.

I am glad that the distinguished Senator from Connecticut raised this question tonight. If the Senator is urging help for this particular office under the present directorship, I would like enthusiastically

cally to join him and be associated with him in whatever he has in mind.

Mr. DODD. I thank the Senator from California.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. DODD. I am happy to yield to the Senator from Arkansas.

Mr. McCLELLAN. Mr. President, I would like to have my name added as a cosponsor of the amendment of the Senator from Connecticut. I think there is great merit in this request for an increase in funds. This is a situation developing that is going to become very distressing, if it is not already so. I think that this money is urgently needed and that it should be appropriated. Therefore, I trust the distinguished chairman of the committee will consider accepting the amendment. I do not think anyone here objects to it. If the chairman would accept it it would expedite the situation in view of the time element involved.

Mr. DODD. Mr. President, I wish to thank the distinguished senior Senator from Arkansas for his support of the amendment. I am very grateful.

Mr. President, I ask unanimous consent that the names of the Senator from Arkansas (Mr. McCLELLAN), the Senator from Kansas (Mr. DOLE), the Senator from Alaska (Mr. GRAVEL), and the Senator from California (Mr. MURPHY) be added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCINTYRE. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield.

Mr. MCINTYRE. Mr. President, I wish to commend the distinguished Senator from Connecticut for grabbing the ball and running with it here. Miss Knight's letter was so appealing and her case was so well stated that I could not help but have it printed in the RECORD. I, too, would like to be added as a cosponsor of the amendment.

Mr. DODD. I thank the Senator.

Mr. President, I ask unanimous consent to have the name of the Senator from New Hampshire (Mr. MCINTYRE) and the name of the Senator from Michigan (Mr. HART), who is now presiding, added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I know of no objection to the amendment.

I have discussed this with the ranking minority member. The Senator from Nebraska will speak for himself on it, but I think we are all prepared to accept the amendment.

Mr. HRUSKA. Mr. President, I not only have no objection but I should like to commend the distinguished Senator from Connecticut for bringing up this item and for relieving the situation which has developed.

The moneys allowed are well within the fees taken, and we will have rendered a proper service in consideration thereof. Thus I commend the Senator for bringing the matter up and would heartily concur with the chairman of the subcommittee in regard to its being allowed.

Mr. DODD. I am very grateful to the Senator from Nebraska for his support.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Connecticut.

The amendment was agreed to.

Mr. RANDOLPH. Mr. President, I have an amendment at the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 7, line 13, insert the following: and renumber chapters accordingly:

"CHAPTER IV—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

"For expenses necessary to improve health and safety in the Nation's coal mines, \$10,000,000.

"CHAPTER V—DEPARTMENT OF THE INTERIOR

"For expenses necessary to improve health and safety in the Nation's coal mines, \$15,000,000."

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

Mr. RANDOLPH. Mr. President, the Coal Mine Health Safety Act, as Senators know, is hallmark legislation. The efforts of many Members in this Chamber and in the other body have contributed to the effective effort to pass a strong measure.

Those who have labored on this legislation, the Senator from New Jersey (Mr. WILLIAMS), Senator JAVITS, and Labor and Public Welfare Committee members, Representative DENT, and many others, in both bodies, are very desirous that we provide funding as soon as possible, and we must not hamper the enforcement program and research effort. Also, the beginning of the disability payments at a later date. I have discussed this amendment with the able Senator (Mr. BYRD) who is manager of the pending bill, and others of the leadership.

Mr. President, I state again that the need is now. The chairmen of the Subcommittees on Labor of the House, Mr. DENT, and the Senate, Mr. WILLIAMS of New Jersey, who successfully managed the new Coal Mine Health and Safety Act to the point where all that remains is the adoption of the conference report by the Senate, have called attention to the need for appropriations to begin administration of our measure.

We believe that a supplemental appropriation of \$15 million for the Bureau of Mines in the Department of the Interior and \$10 million for the Department of Health, Education, and Welfare would be timely and appropriate in the pending measure. I have offered, with the able junior Senator from Pennsylvania (Mr. SCHWEIKER), an amendment to include those amounts in this bill.

I am informed, I must explain, that the Bureau of Mines may determine its requirement for the balance of fiscal 1970 to be approximately \$9 million for enforcement requirements of the act and \$16 million for research.

Consequently I feel that the Senate should know that we have an obligation

to make an appraisal of the Bureau of Mines progress in meeting its responsibilities and likewise make an assessment of its fiscal position when the first supplemental of 1970 is under development early next year.

Mr. President, we must not hamper either the enforcement program or the research efforts of the Bureau of Mines or the Department of Health, Education, and Welfare in meeting the requirements placed on them to improve the health and safety of the coal miners of this Nation and to begin in an adequate manner the program of disability payments provided in the coal mine health and safety measure.

We are grateful, I emphasize, to the Senator from West Virginia (Mr. BYRD) who has given effective aid in the Coal Mine Health and Safety Act, for his cooperation. Our colleague, the manager of this bill, has agreed to the amendment.

Mr. BYRD of West Virginia. Mr. President, I have discussed this amendment with the Senator from Nebraska (Mr. HRUSKA) and we concur in its acceptance. The amendment puts back language which the committee had subtracted in title 4, but the amendment now being offered restores the language of chapter 4.

Therefore, Mr. President, I ask unanimous consent that the clerk may be allowed to re-number the titles and make other technical changes that would be necessitated by acceptance of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHWEIKER. Mr. President, will the Senator from West Virginia yield?

Mr. RANDOLPH. I am gratified to yield to my helpful colleague from Pennsylvania.

Mr. SCHWEIKER. I want to say that I strongly support the efforts of the Senator from West Virginia, as well as the distinguished chairman of our committee, and other committee members, in regard to the pending amendment.

I personally believe that the bill is the most significant piece of industrial health safety legislation to come out of Congress in several decades.

I believe that this is a very important start and am very proud to be a cosponsor of the amendment, and thank the Senator from West Virginia (Mr. RANDOLPH) very much for yielding to me, and for his leadership.

Let me add that the amendment would provide badly needed additional funds to the Departments of Interior and Health, Education, and Welfare, in order that they might lose no time in carrying out the provisions of the new coal mine health and safety legislation.

The Department of the Interior would receive an additional \$15 million for the Bureau of Mines for the balance of this fiscal year. This, if anything, is a modest increase, since it is estimated that all the new safety provisions will mean an annual cost of \$47 million over the current operating budget of the Bureau of Mines.

Of this amount, about half would be used for enforcement purposes, such as the hiring of additional mine inspectors. The remaining half would go into a

stepped-up program of coal mine safety research that the new legislation requires the Bureau of Mines to conduct.

In addition, the Department of Health, Education, and Welfare would receive under this amendment \$10 million. About \$3.5 million is needed to promote health research on the black lung program and start the massive lung X-ray program for miners provided for in the bill. And \$6.5 million will be needed in order to fill some of the first compensation claims to be filed by those disabled miners and their families eligible for compensation under the new bill.

Mr. President, this is indeed a reasonable request for added funds and failure to provide them would undermine the start of the comprehensive coal mine health and safety program which this body and the other body have already supported so vigorously.

Mr. GRIFFIN. Mr. President, I realize that the hour is late and I understand the Senate interest is in getting on with this, but at the very least, I would like to register the concern of the administration as to the final result of the conference on coal mine safety legislation.

The administration advocated and supported meaningful coal mine safety legislation.

There is disappointment, frankly, with the final result. The cost of this legislation will be considerably higher than was anticipated—in the neighborhood of \$300 million.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Secretary of the Interior and the Secretary of Labor to the Senator from New York (Mr. JAVITS) and other material which provides an analysis of the Coal Mine Safety legislation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF LABOR,
Washington, D.C.

Subject: Title IV, coal mine safety bill.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: We have consistently supported the principle that workers must be provided with adequate protection under workmen's compensation laws and that the State system of such laws should be continued and, where needed improved.

When I testified on June 3, 1969, before the Select Subcommittee on Labor, I said "We do wish to support the State system. I agree with you that there are many inadequacies in the system, and we have to develop a way of getting at those inadequacies."

When the Under Secretary of Labor testified on March 26, 1969, before the House General Labor Subcommittee of the Committee on Education and Labor in connection with the Federal Coal Mine Health and Safety Act, he supported the then existing section of the bill that would provide a motivation for the States to act in meeting the miners' needs through improvement in State compensation law.

While we have consistently supported the improvements in State workmen's compensation law, we do not believe that superimposition of a Federal system is necessary to compensate coal miners who are disabled because of pneumoconiosis.

With its provision for a Federal take over of compensation payments, it is our considered judgment that the benefit section as

set forth in Title IV of the Federal Coal Mine Health and Safety Act of 1969 is not the proper approach for the protection of the workers.

We believe that the solution to this problem is through any necessary improvement in the system of State workmen's compensation laws. In his testimony on March 26, 1969, the Under Secretary of Labor said: "Workmen's compensation has traditionally been provided through a system of State laws. The states possess procedures and know-how in the workmen's compensation field. It is our present judgment that reliance should continue to be placed on that system of State laws." We continue to support this position.

In addition to the fact that Title IV if enacted into law would constitute an intrusion into the State workmen's compensation system, we are troubled by the cost of the proposed program. We are here considering a program that over the next few years will cost many hundreds of millions of dollars. Our concern as to the potential cost of Title IV is based on the ongoing experience of the Commonwealth of Pennsylvania. In December of 1965, the Commonwealth of Pennsylvania began a limited version of the benefit program as outlined in Title IV. Title IV, however, would be much more costly in that it would provide benefits at a higher rate of compensation and to additional categories of people.

The Pennsylvania Act presently applies to miners who are totally and permanently disabled primarily due to pneumoconiosis. When the Pennsylvania program was under study prior to enactment, the best estimates were that between 5 and 8 thousand claimants would eventually become qualified. Since January 1966, the Commonwealth has processed more than 45,000 claims, and benefits are presently being paid to 25,600 miners. In addition, there is a backlog of approximately 4,000 claimants who will probably qualify under the Pennsylvania law. The cost implications of such numbers are obvious.

If this Title should be enacted into law the Congress would be singling out one group of workers who have contracted a specific disease for payment of special workmen's compensation benefits. Unfortunately, there are other categories of workers who are subject to other diseases in their occupational trade or process. State law now applies to these workers. Should the Federal Government enact a special benefit program for the coal miners other groups of workers would seek similar protection. A hodgepodge mixture of State and Federal compensation law could ensue.

For these reasons, we believe that Title IV is inappropriate for the Federal Coal Mine Health and Safety Act of 1969.

Sincerely,

GEORGE P. SHULTZ,
Secretary of Labor.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., December 12, 1969.
Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: In response to your request, estimates of the Federal costs of the benefit provisions of the Federal Coal Mine Health and Safety Act of 1969 have been developed. These estimates were developed after consultation between this Department and the Department of Health, Education, and Welfare; the Department of Labor, and the Bureau of the Budget.

Several major problems in preparing cost estimates developed. The language of the draft provision of the bill does not define the term "total disability due to pneumoconiosis". It simply provides that the Secretary of Health, Education, and Welfare shall, by regulation, prescribe standards for deter-

mining whether a miner is totally disabled due to pneumoconiosis. The standards established by Health, Education, and Welfare for such determination are an essential element in determining the cost of this program. From conversations with the Committee staff, it is not clear just what the intention is with respect to the establishment of criteria for determining eligibility due to total disability from pneumoconiosis. If the standards established by Health, Education, and Welfare allow those miners to qualify under this program who do not otherwise qualify for disability benefits under the social security program, the cost to the Federal Government could be in the neighborhood of \$300 million or more during the first year. If, on the other hand, the standards established by Health, Education, and Welfare are similar to the standards established under the social security program, based on the Pennsylvania experience which is administered under comparable standards, the cost to the Federal Government could be in the neighborhood of \$150 million or more during the first year. If the standards established by Health, Education, and Welfare are to be somewhere in between, the cost of course could range between these two figures.

The figures attached to this letter have been computed on the basis of both assumptions set out above. Any attempt to offset these costs by benefits otherwise payable for total disability under the social security program is extremely difficult. No exact figures are available indicating the number of miners presently receiving total disability benefits due to pneumoconiosis. Also various assumptions were made regarding the age of the potential beneficiaries, the number of dependents, mortality rates and other influencing factors. It must be understood that the assumptions underlying the attached figures may have introduced a margin of error into the estimates, the magnitude of which is unknown.

The estimates do not reflect State costs, which in future years would be considerable, nor do they consider Federal administrative costs of determining eligibility and making payments. It may cost \$3,000,000 or more, including the cost of medical services, to make initial determinations of disability due to pneumoconiosis. In addition, there would be a continuing cost of preparing and issuing benefit checks.

Sincerely yours,

WALTER HICKEL,
Secretary of the Interior.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969—ESTIMATED FEDERAL COST OF BENEFIT PAYMENTS

SUMMARY

Plan I

The Federal benefit provision will be similar in experience to the Pennsylvania Pneumoconiosis Benefit Law.

The criteria for disability are:

1. The miner must have X-ray evidence of pneumoconiosis.
2. The miner must be completely disabled—not able to engage in any gainful employment.

First year cost without offsets, \$154,650,000.
Twenty-year cost without offsets, \$1,200,000,000.

Plan II

Criteria for disability:

1. X-ray evidence of pneumoconiosis.
2. Evidence of physical impairment.
3. Age.

First year cost without offsets, \$383,650,000.
Twenty-year cost without offsets, \$2,980,000,000.

Assume:

1. The Federal benefit provision will be similar in experience to the Pennsylvania Pneumoconiosis Benefit Law. The criteria for benefits are:

(1) The miner must have X-ray evidence of pneumoconiosis.

(2) The miner must be completely disabled—not able to engage in any gainful employment.

A. On 10/1/69, 25,579 miners were on Pennsylvania's benefit rolls. Two thousand will be transferred in the next 18 months from workmen's compensation to benefit payment by virtue of having exhausted benefits under workmen's compensation. Total on benefits 7/17/71, 27,579.

B. Based on workmen's compensation data, 62 percent of those compensated are anthracite miners, and 38 percent are bituminous miners.

$27,579 \times 38\% = 10,500$ bituminous.

$27,579 \times 62\% = 17,079$ anthracite.

C. In 1952 and 1969 Pennsylvania had approximately 25 percent of the underground bituminous-coal miners.

$10,500 \times 4 = 42,000$, total number of bituminous miners in the inactive population who meet the Pennsylvania criteria.

D. In the active miners, the Public Health Service found 3 percent with X-ray evidence of advanced pneumoconiosis— $80,000 \times .30 = 2,400$.

E. Total bituminous miners eligible for benefits— $42,000 + 2,400 = 44,400$.

F. There are no anthracite mines in any State other than Pennsylvania. Number of anthracite miners on the Pennsylvania benefit roll, 17,079.

G. Total number of bituminous miners and anthracite miners eligible for benefits— $44,000 + 17,000 = 61,400$.

H. Assume 7,000 men (4,500 bituminous miners and 2,500 anthracite miners) are on or will qualify for State workmen's compensation— $61,400 + 7,000 = 54,400$ total eligible miners.

I. Assume each miner has 1.5 dependents. Federal payment is $\$2,657 - 54,400 \times 2,657 = \$145,000,000$.

J. Widows benefits, $\$9,650,000$, for a total of $\$154,650,000$ ($\$145,000,000 + \$9,650,000$).

Criteria for total disability:

1. X-ray evidence of pneumoconiosis.
2. Evidence of physical impairment.
3. Age.

Population at risk in 1952:

Bituminous-coal miners-----	400,000
Anthracite miners-----	120,000
Total -----	520,000
Mine population in 1952 and 1969:	

Age group	1952 work force		Age 1969	1969 work force	
	Number of men	Surviving in in 1969		Number of men	Age group
20 to 24-----	48,000	47,000	37 to 41	9,600	20 to 24
25 to 29-----	60,000	57,000	42 to 46	12,600	25 to 29
30 to 34-----	56,000	52,000	47 to 51	11,200	20 to 34
35 to 44-----	104,000	94,000	52 to 61	20,800	35 to 44
45 to 54-----	76,000	56,000	62 to 71	15,200	45 to 54
55 to 59-----	36,000	17,000	72 to 76	7,200	55 to 59
60 to 64-----	20,000	6,000	Over to 77	4,000	60 to 64
Total-----	400,000	329,000		80,000	

Assume 93% of surviving men in 1952 work force now over 61 are eligible for benefits, or 75,000.

Assume of the surviving men in the 52 to 61 age group in the 1952 work force, 10,000 are still in the work force and that 25 percent of the remaining group are eligible for benefits, or 21,000.

($94,000$ less $10,000$ divided by 4, equals $21,000$.)

Assume that in the present work force the number of eligibles is the same as the number with pneumoconiosis— $80,000$ times .10 equals $8,000$.

Total bituminous miners presently on State workmen's compensation plan, 4,500 for a total of 99,500.

Anthracite Miners (See Plan I for basic data):

Employed in 1952—120,000. All are no longer employed in anthracite mines. Assume 60 percent mortality. Number of survivors in 1969—48,000.

Assume 75 percent are over 61 and eligible for benefits, 36,000.

Assume 50 percent of those less than 61 are eligible for benefits, 6,000.

Assume of the 6,000 presently in the anthracite work force, 20 percent would qualify, 1,200, for a total of 43,200.

Presently receiving State workmen's compensation, 2,500, which leaves 40,700.

Total bituminous miners, 99,500; total anthracite miners, 40,700; for a total of 140,200. Assume each case has 1.5 dependents. Federal payment is $\$2,657$.

Total cost of miner benefits: $140,200$ times $\$2,657$ equals $\$374,000,000$.

Widow cost, $\$9,650,000$.

Total cost, $\$383,650,000$ ($\$374,000,000$ plus $\$9,650,000$).

Mr. GRIFFIN. Mr. President, I realize that the conference report is not before the Senate at this moment, but the

amendments of the Senator from West Virginia would fund that legislation. Although there might be some technical questions raised to the amendment because the conference report has not yet been adopted. I realize that we are going to move on to the conference report yet this evening so I shall not object.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from West Virginia.

The amendments were agreed to.

Mr. WILLIAMS of New Jersey. Mr. President, I have an amendment at the desk which I ask be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 7, line 13, insert the following, and renumber chapters accordingly:

"CHAPTER IV

"DEPARTMENT OF LABOR

"WAGE AND LABOR STANDARDS ADMINISTRATION

"For expenses necessary to implement the Federal Construction Safety Act of 1969, (P.L. 91-54) $\$2,000,000$."

Mr. WILLIAMS of New Jersey. Mr. President, last August, the Construction Safety Act was enacted into law—Public law 91-54—to provide for improved health and safety conditions in the building trades and construction industry in all Federal and federally financed, or federally assisted construction projects.

The enactment of the Construction Safety Act offers great hope of reducing the dreadfully high fatality and injury rates in the construction industry. Last

year alone, 2,800 men were killed on construction jobs. The estimated cost of death and injury in that industry runs at a minimum of $\$3$ billion a year. In order to enable the Department of Labor to implement the Construction Safety Act, funds are vitally necessary.

I understand that it has been estimated that the cost of administration of a safety act of this nature runs at approximately $\$2$ per worker. There are approximately 2.1 to 2.3 million construction workers on Federal, federally financed, and federally assisted projects. It is highly appropriate, therefore, that at least $\$2$ million be appropriated to the Department of Labor so that it may begin to fulfill the promise of this recently enacted legislation.

Mr. BYRD of West Virginia. Mr. President, I am very happy to accept the amendment and I know that I speak for the Senator from Nebraska (Mr. HRUSKA) in so doing.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Jersey.

The amendment was agreed to.

Mr. GRIFFIN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

On page 10, after line 2, insert:

"MARITIME ADMINISTRATION

"STATE MARINE SCHOOLS

"For an additional amount for 'State Marine Schools' for The Maritime Academy for the State of Michigan, $\$130,000$."

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the name of my distinguished colleague from Michigan (Mr. HART) be added as a cosponsor.

The PRESIDING OFFICER (Mr. HART in the chair). I am delighted to ask if there is any objection to the request of the Senator from Michigan? The Chair hears none, and it is so ordered.

Mr. GRIFFIN. Mr. President, at the beginning of the fiscal year there was no Maritime Academy for the State of Michigan. Thus, there could be no request in the budget submitted for this fiscal year. But there is now a Maritime Academy serving the Great Lakes in Michigan at Northwestern Michigan College.

The authorization for this appropriation has been approved and is law. And the institution has been established by the legislature of the State of Michigan.

In accordance with the provisions of the Maritime Academy Act of 1958, under which Federal assistance is provided for State marine schools, the pending amendment would provide Federal funds for assistance to a program that is already underway.

I have discussed the amendment with the distinguished Senator from West Virginia (Mr. BYRD) and the distinguished ranking minority member of the committee (Mr. HRUSKA) and it is my understanding they have no objection.

Mr. BYRD of West Virginia. Mr. President, the Senator from Michigan states the case correctly. He discussed this matter with the Senator from Nebraska (Mr.

HRUSKA) and with me, and we have agreed to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment was agreed to.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I understand that the bill is just about ready for third reading.

I ask unanimous consent, for reasons which may or may not become apparent later—this is done with the approval of the joint leadership—with the understanding that when we return to this bill it will be to come to the third reading, that the pending business be laid aside temporarily and, if there is no objection to that request, that the conference report on the Federal Coal Mine Health and Safety Act be called up.

May I say, contrary to what I said earlier, it is very possible that the Defense appropriation conference report may also come up tonight, as long as so many Senators are on the floor.

FEDERAL COAL MINE HEALTH AND SAFETY ACT—CONFERENCE REPORT

Mr. WILLIAMS of New Jersey. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2917) to improve the health and safety conditions of persons working in the coal-mining industry of the United States. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of December 16, 1969, pp. H12553-H12572, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. WILLIAMS of New Jersey. Mr. President, on October 2, 1969, this body passed a coal mine health and safety law by a record unanimous vote of 74 to zero. Less than 1 month later, the House passed the coal mine bill by a vote of 389 to 4. Last night, at 10:30 p.m., our colleagues on the House side accepted the conference report by a vote of 333 to 12. Today, I submit to this body, the report of the committee of conference so that we may send this bill without any delay on to the President for signature and final enactment into law.

Mr. President, all 12 Senate conferees have signed the report which is in the nature of a substitute.

Before I proceed, I wish to bring to the attention of my colleagues the most gratifying complete cooperation I have received on this bill from all Senate conferees. The ranking majority member (Mr. RANDOLPH) and the ranking minority member (Mr. JAVITS) have worked

with me in the development of this bill and in its passage many long hours. My colleague from West Virginia has brought to this legislation his special knowledge of the health and safety problems in the coal mining industry and the special concerns of his constituents. My colleague from New York has brought to this bill his bipartisan desire for effective health and safety legislation. Both the majority and minority staffs have given of themselves unselfishly. They are to be commended.

The Senate conferees were successful in insisting on all provisions in the Senate bill which provided more effective protection to the coal miners. The conference report reflects an effort by the conferees of both Houses to blend the best of the Senate bill with the best of the House amendments. I firmly believe the conferees have achieved the most effective coal mine health and safety law ever considered by Congress.

Briefly, the conference report reflects the Senate conferees' insistence on the Senate's lower coal dust standard, and on the Senate's closed end conversion period for explosion-proof equipment. In addition, your conferees succeeded in retaining the Senate's more stringent penalties for criminal violations of the act.

At this point I ask unanimous consent to include a summary of the major provisions of the bill.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF MAJOR PROVISIONS

TITLE I—GENERAL

(1) Grants authority for the promulgation of mandatory health and safety standards to the Secretary of the Interior (hereinafter referred to as the "Secretary"). The Secretary promulgates all mandatory standards, but is responsible for developing and revising only mandatory safety standards. The Secretary of Health, Education, and Welfare (HEW) is responsible for developing and revising mandatory health standards. No standard promulgated by the Secretary shall reduce the protection afforded miners below that provided by the interim mandatory health and safety standards contained in titles II and III, respectively.

(2) Provides opportunity for a representative of miners, whenever he has reasonable grounds to believe that a violation of a mandatory health or safety standard exists or an imminent danger exists in a mine, to obtain an immediate inspection of such mine.

(3) Provides a minimum of at least four annual inspections of each mine. Also provides a minimum of one spot inspection during every five working days of a mine (A) that liberates excessive quantities of methane or other explosive gases during its operations, (B) in which a methane or other gas ignition or explosion has occurred which resulted in death or serious injury at any time during the previous five years, or (C) the Secretary believes has especially hazardous conditions.

(4) Establishes the procedural mechanism for finding dangerous conditions or violations of standards in mines, and for the issuance of notices and orders—including withdrawal orders—relative to such.

(5) Provides administrative and judicial review procedures.

(6) Establishes mandatory civil penalties of up to \$10,000 for operator violations of a standard or any other provision of the Act. Establishes a civil penalty of up to \$250 to

a miner who wilfully violates specified provisions of the Act (smoking, carrying of matches, etc.). Provides criminal penalties for any operator who wilfully violates a standard or knowingly violates or fails or refuses to comply with orders. Upon conviction, such operator shall be punished by a fine of not more than \$25,000 and/or imprisonment for not more than one year for the first conviction, and for subsequent convictions, by a fine of not more than \$50,000 and/or imprisonment for not more than five years. Also establishes similar civil and criminal penalties to any director, officer, or agent of a corporate operator for like violations, failures, or refusals. Criminal penalties are also provided for false statements, representations, or certifications relative to the Act, and for the introduction and delivery in commerce of any equipment for use in a coal mine which is falsely represented to be in compliance with the provisions of the Act.

(7) Provides for pay guarantees to miners idled by a withdrawal order.

(8) Prohibits the discharge or other discrimination against a miner for exercising rights under the Act.

TITLE II—INTERIM MANDATORY HEALTH STANDARDS

(1) Establishes interim mandatory health standards effective six months after the date of enactment of the Act.

(2) Requires each operator to take accurate samples of the amount of respirable dust in the mine atmosphere. The samples are transmitted to the Secretary and analyzed and recorded by him.

(3) Establishes a 3.0 milligram per cubic meter of air (mg/m³) dust standard effective six months after enactment. Extensions of time to comply with the standard (permits for noncompliance) may be granted by the Panel (established by section 5) for a period not to exceed twelve months from the effective date of the standard.

(4) Establishes a 2.0 mg/m³ dust standard effective three years after enactment, but the Panel may grant permits for noncompliance to an operator for a period not to exceed three additional years from the effective date of the standard.

(5) The Secretary of Health, Education, and Welfare has the continuing authority, beginning one year after enactment, to further reduce the dust standard below the levels established by the Act to levels which will prevent new incidences of respiratory disease and the further development of such disease in any person.

(6) Each operator shall cooperate with the Secretary of Health, Education, and Welfare in making a chest x-ray available to each miner within eighteen months after enactment, again three years later, and at such subsequent intervals determined by the Secretary of Health, Education, and Welfare but not to exceed every five years. Each worker who begins work in a coal mine for the first time shall be given a chest x-ray at the commencement of his employment and again three years later. If the second x-ray shows evidence of the development of pneumoconiosis, the worker shall be given an additional x-ray two years later. The x-rays may be supplemented by other tests deemed necessary by the Secretary of Health, Education, and Welfare. The Secretary of Health, Education, and Welfare is also responsible for reading, classifying, and recording all results of x-rays and other medical tests.

(7) Any miner who shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine where the respirable dust concentration is not more than 2.0 mg/m³. Effective three years after enactment, the option of transfer shall be to a position in an area of the mine where such concentration

is not more than 1.0 mg/m³, or if such level of concentration is not attainable in the mine, to an area where the concentration is the lowest attainable below 2.0 mg/m³. Any miner so transferred shall not receive less than the regular rate of pay received by him immediately prior to transfer.

(8) Incorporates the noise standard prescribed under the Walsh-Healey Public Contracts Act, and directs the Secretary of Health, Education, and Welfare to improve upon such standard.

TITLE III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

(1) Establishes interim mandatory safety standards effective three months after the date of enactment of the Act.

(2) Establishes detailed requirements to provide for safer working conditions in underground coal mines. These include requirements with regard to roof support, ventilation, combustible materials and rock dusting, electrical equipment, trailing cables, grounding, underground high-voltage distribution, underground low- and medium-voltage alternating current circuits, trolley and trolley feeder wires, fire protection, maps, blasting and explosives, hoisting and mantrips, emergency shelters, communications, escapeways, and other miscellaneous matters.

(3) Establishes requirements for the use of permissible equipment in all underground coal mines. Requires that all electric face equipment at gassy mines and all such small equipment at all mines be permissible within 15 months after enactment. It is also required that, in the case of mines not previously classified as gassy which are below the watertable, such large equipment must be permissible in 15 months, but the Panel may grant extensions of time (permits for noncompliance) of not to exceed in the aggregate an additional 33 months if the Panel determines, based on specified criteria, that the operator is unable to comply with the permissibility requirements because of unavailability of permissible equipment. In the case of such mines which are located entirely above the watertable, it is required that such large equipment be permissible within 51 months after enactment but the Panel may grant extensions of not to exceed 2 additional years on a mine-by-mine basis because of unavailability of such equipment.

TITLE IV—BLACK LUNG BENEFITS

(1) Provides for the payment of benefits for death or total disability due to pneumoconiosis.

(2) Coal miners and former coal miners who are totally disabled due to pneumoconiosis will receive benefits at a rate equal to 50 percent of the minimum monthly payment to which a disabled Federal employee in grade GS-2 would be entitled at the time of payment. This represents approximately \$136 per month. Widows of coal miners and former coal miners whose deaths are due to pneumoconiosis or whose deaths occurred while receiving total disability benefits, receive benefits at the rate prescribed for totally disabled miners. The rates prescribed above are increased for dependents at the rate of 50 percent for one dependent (widow or child), 75 percent for two dependents, and 100 percent for three or more dependents. The benefits for miners and widows will be reduced on account of payments under the workmen's compensation, unemployment compensation, or disability insurance laws of the State and, in the case of miners only, on account of excess earnings, as provided under the Social Security Act for benefits payable under that Act.

(3) The following presumptions are used in determining entitlement:

A. If a miner who is suffering from pneumoconiosis was employed for 10 years or more in an underground coal mine, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment.

B. If a miner worked ten years in such a mine and died of a respirable disease, there will be a rebuttable presumption that his death was due to pneumoconiosis.

C. If a miner is suffering from, or dies from, an advanced irreversible stage of pneumoconiosis, it will be irrebuttably presumed his death or total disability was due to pneumoconiosis.

(4) Claims filed before December 31, 1972, will be processed by the Secretary of Health, Education, and Welfare in a manner similar to that he uses for processing claims for disability under the Social Security Act. If the claim is filed after December 31, 1971, benefits under that claim may be paid only until January 1, 1973. Claims filed on or after January 1, 1973, will be processed under the appropriate State workmen's compensation law if the Secretary of Labor has determined it has adequate coverage for pneumoconiosis. He will, generally speaking, determine a State law to have adequate coverage for pneumoconiosis if the cash benefits under such law and the criteria for determining eligibility are not less favorable to the claimant than those applicable to claims filed before January 1, 1973. Where the applicable State workmen's compensation law does not provide adequate coverage for pneumoconiosis, the persons entitled to benefits will have their claims processed (so far as applicable) under the terms of the Longshoremen's and Harbor Workers' Compensation Act.

(5) In the case of claims filed on or after January 1, 1973, no payments of benefits may be made after seven years after the date of enactment of the Act.

TITLE V—ADMINISTRATION

(1) Provides authorization for appropriations for health and safety research to be carried out by the Secretary of Health, Education, and Welfare and the Secretary, respectively.

(2) Requires the Secretary to expand programs for the education and training of operators, agents, thereof, and miners in accident-control, healthful working conditions, and in the use of coal mining equipment and techniques.

(3) Provides for economic assistance to any small business concern operating a coal mine to meet the requirements imposed by the Act. Such assistance shall be given by the Small Business Administration.

(4) Specifies qualifications and training requirements for employees of the Secretary; particularly inspectors.

TIMETABLE OF ACTIONS BY SECRETARY OF THE INTERIOR AND SECRETARY OF HEALTH, EDUCATION, AND WELFARE

[Action and due date after enactment]

1. Publish proposed health and safety standards for surface coal mines (Sec. 101(i)), Secretary of Interior, 15 months after enactment.

2. Publish proposed health and safety standards for surface areas of underground coal mines. (Sec. 101(i)), Secretary of Interior, 15 months after enactment.

3. Publish all interpretations; regulations, and instructions not inconsistent with this Act (Sec. 101(j)), Secretary of Interior, immediately.

4. Appoint separate advisory committee on coal mine health and safety research (Sec. 102), both secretaries, 3 months after enactment.

5. Prescribe methods, locations, intervals and manner of sampling respirable dust (Sec. 202(a)), both secretaries, jointly, 2 months after enactment.

6. Establish time schedule for reducing respirable dust concentrations below established levels, Secretary of Health, Education, and Welfare, beginning 12 months after enactment.

7. Prescribe specifications for taking chest roentgenograms (Sec. 203(a)), Secretary of

Health, Education, and Welfare, within 6 months after enactment.

8. Establish and publish proposed mandatory health standards re: noise (Sec. 206), both secretaries, within 6 months after enactment.

9. Prescribe manner for testing noise level at a coal mine (Sec. 206), Secretary of Health, Education, and Welfare, within 6 months after enactment.

10. Initial approval of roof-control plans (Sec. 302(a)), Secretary of Interior, 5 months after enactment.

11. Prescribe minimum air quantity and velocity reaching working face (Sec. 303(b)), Secretary of Interior, within 6 months after enactment.

12. Prescribe maximum respirable dust level for intake aircourses (Sec. 303(b)), Secretary of Interior, within 15 months after enactment.

13. Initial approval of ventilation and methane and dust control plan (Sec. 303(o)), Secretary of Interior, within 6 months after enactment.

14. Initial approval of plan of emergency action when mine fan stops (Sec. 303(t)), Secretary of Interior, within 5 months after enactment.

15. Conduct survey of availability of permissible electric face equipment and publish same (Sec. 305(a)(5)), Secretary of Interior, within 12 months after enactment.

16. Prescribe procedures and safeguards for making repairs on high-voltage lines (Sec. 307(d)), Secretary of Interior, within 3 months after enactment.

17. Establish minimum requirements for firefighting equipment (Sec. 311(a)), Secretary of Interior, 3 months after enactment.

18. Prescribe specifications for fire suppression devices (Sec. 311(e)), Secretary of Interior, within 15 months after enactment.

19. Require that devices for warning of fires be installed on belt conveyors. (Sec. 311(g)), Secretary of Interior, within 5 months after enactment.

20. Prescribe schedule for monthly fire suppression devices on belt haulageways (Sec. 311(g)), Secretary of Interior, 3 months after enactment.

21. Prescribe illumination standards (Sec. 317(e)), Secretary of Interior, within 12 months after enactment.

22. Establish methane limits in or on surface coal handling facilities (Sec. 317(h)), Secretary of Interior, within 15 months after enactment.

23. Prescribe minimum standards for emergency medical aid, Secretary of Health, Education, and Welfare, within 3 months after enactment.

24. Prescribe improved methods re: providing adequate oxygen (Sec. 317(o)), Secretary of Interior, after operative date of Title III.

25. Establish procedures for issuing permits re: hazards from cave-ins of tunnels under water (Sec. 317(r)), Secretary of Interior, prior to operative date of title III.

26. Propose standards for preventing explosion from gases other than methane and for testing such gases (Sec. 317(t)), Secretary of Interior, within 15 months after enactment.

27. Prescribe minimum Federal standards for "certified" or "registered" persons (Sec. 318(a)), Secretary of Interior, prior to operative date of title III.

28. Establish requirements for persons qualified as electricians (Sec. 318(b)), Secretary of Interior, prior to operative date of title.

29. Establish specifications re: permissible (Sec. 318(c)), Secretary of Interior, prior to operative date of title.

30. Prescribe procedures for field testing and approval of electric face equipment (Sec. 318(i)), Secretary of Interior, prior to operative date of title.

31. Study of ways to coordinate Federal and State activities in the field of coal mine

that tax reform hangs in the balance tonight. But I think a budget that is overpowering is a budget that is difficult to meet.

With the combination of the Senate and House Armed Services Committee and the two Committees on Appropriations, the cut of \$8.1 billion has been sweated through and has been obtained.

I think that the Senator from Louisiana, moving in in the last minute to represent our distinguished dean of military affairs, the Senator from Georgia (Mr. RUSSELL), has done an excellent job.

I commend the Senator and his committee.

Mr. ELLENDER. Mr. President, I appreciate that very much. I say in due deference to the Defense Department that they cooperated fully with us.

I would say that a large portion of the cuts made were suggested by the Defense Department—of course, with a little prodding.

They said they could cut this out and cut that out and could do this and could do that.

In addition, we cut a few hundred million dollars additional.

Mr. MCINTYRE. Mr. President, I do not want to deny any credit to the Defense Department. However, I think they were perhaps reading the handwriting on the wall.

Mr. YOUNG of North Dakota. Mr. President, the bill the House sent us was a good bill and the Senate bill was a good bill. We had some excellent staff assistance.

However, I would like to go beyond either the Johnson budget or the Nixon budget. The conference report now before us represents a cut of about \$9 billion.

The services themselves asked for \$109 billion. Of course, it is their responsibility to defend the United States. And this was their idea of the amount of money it would take. However, there is a vast difference between \$109 billion and the amount of money Congress appropriated.

I would point out that the Joint Chiefs of Staff agreed that under all the circumstances this was a satisfactory budget. They even helped us, particularly Secretary Laird, to make these very large savings.

Mr. FULBRIGHT. Mr. President, I join in the commendation of the Senator from Louisiana and the committee.

I certainly include the staff. The staff of the committee has been most cooperative with me and with the members of my staff.

Mr. Bill Woodruff, Mr. Francis Hewitt, Mr. Guy McConnell and Mr. Edmund Hartong are all very competent people.

This is the first time, I think, in many years that the committee, working with the House committee, has turned this burgeoning budget around. And it is going in the right direction. I think it is a very healthy sign. I hope that I can be of assistance to them.

I know that the Senator from Louisiana and his colleagues have worked very hard. It is a very difficult job.

U.S. ACTIVITIES IN LAOS

Mr. President, though I do not believe it went far enough, I was pleased that the Senate, following the executive session discussion of the U.S. activities

in Laos, approved an amendment prohibiting the introduction of ground combat troops into Laos or Thailand.

I am very pleased that the Senator from Louisiana has just informed us that that provision was retained in conference.

I did not initially support the language offered by the distinguished Senator from Idaho (Mr. CHURCH) because it appeared to imply Senate approval for an open-ended policy of bombing in Laos—an activity authorization which I do not believe any President has sought, nor any has Congress granted.

Since the White House—and therefore the administration—has apparently embraced the Senate amendment on ground combat troops, I now wonder what assurances can be given the American people through the Senate on the question of our bombing in Laos.

It was testified the other day, as the Senator knows, that there are very large numbers of bombing strikes mounted from Thailand going on in Laos, and particularly that bombing associated with the Laotian war rather than with the Vietnam war, or as they related it in our testimony, the Ho Chi Minh Trail.

Is there any limit on the amount of bombing we will undertake?

What are the prospects for the level of bombing in the coming months?

Why has this administration continued the secrecy surrounding disclosure about the extent of our bombing?

What are the prospects for the administration to make full disclosure to the American people as they have now done to the Senate?

In closing, I might note the attached Harris poll. Though over 50 percent of the public favored sending of advisers to meet a Communist threat in Laos, only 19 percent favored the sending of combat troops to forestall a Communist takeover.

The question was never asked about what the people thought about sending bombers—probably because either the poll takers did not know about the bombing or because they believed those polled knew nothing about bombing in Laos.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the Harris survey, entitled "U.S. Advisers for Laos Are Favored, 57 to 30."

There being no objection, the survey was ordered to be printed in the RECORD, as follows:

U.S. ADVISERS FOR LAOS ARE FAVORED, 57 TO 30
(By Louis Harris)

The U.S. policy of sending military advisers to Laos to aid the forces there resisting a Communist take-over is supported nationally by a 57 to 30 per cent margin. However, in a showdown situation in which it appeared that only by U.S. troop intervention could Laos be kept from going Communist, only 19 per cent of the public would favor sending in American fighting men.

Laos, which borders on Vietnam, has been the scene of heightened guerrilla warfare in recent months, with an estimated 50,000 North Vietnamese troops reported to have been infiltrated there. The United States is believed to have an undercover network there of military advisers to assist the government resistance. Congressional committees have recently been holding secret hearings to determine if U.S. "adviser" activity in Laos

might not be a prelude to American involvement in another Vietnam.

Fundamentally, the set of public opinion on sending military advisers to Laos is not dissimilar to what it was about South Vietnam in 1963. The public wants to see as much help as possible given to the forces resisting a Communist take-over. But, in the wake of the Vietnam experience, no more than one in five Americans is prepared to commit fighting troops. A relatively higher 37 per cent want the United States to "stay out of Laos altogether." The crucial middle ground, which holds the balance, is equally opposed to sending troops or of pulling out entirely.

Between Oct. 16 and 22, a cross-section of 1,771 people across the country was asked: "North Vietnam has recently sent a large number of troops into Laos which is right next to South Vietnam. The United States has sent military advisers into Laos to help prevent that country from being taken over by the Communists. Do you favor or oppose the U.S. sending in military advisers to Laos?"

SENDING U.S. MILITARY ADVISERS INTO LAOS

[In percent]

	Favor	Oppose	Not Sure
Nationwide.....	57	30	13
Under 8th grade educated.....	50	28	22
High school educated.....	58	29	13
College educated.....	61	31	8

To test just how far beyond the adviser stage in assistance public opinion would go, this question was also put to the cross-section:

"If it appeared that the Communists were going to take over the government of Laos, would you favor sending in American troops to keep the Communists from taking over, continuing to send in military advisers as we are now, or staying out of Laos altogether?"

IF LAOS WERE THREATENED BY COMMUNIST TAKE-OVER

[In percent]

	Send troops	Just advisers	Stay out
Nationwide.....	19	31	37
By education:			
8th grade or less.....	22	20	36
High school.....	20	32	35
College.....	16	36	39

When asked their reasons for favoring commitment of troops, advisers, or staying out of Laos altogether, the thinking of the public was significant. Here is a summary of their volunteered reasons:

WHY STAY OUT ALTOGETHER—37 PERCENT
"We don't need another Vietnam" (15 percent).

"Leave Asia to Asians (6 percent).
"Bring home all our troops from Asia" (5 percent).

"Let them decide their future" (4 percent).
"Mind our own problems at home" (3 percent).

"We can't win a war in Asia" (3 percent).
"I'm tired of war" (1 percent).

WHY SEND IN MILITARY ADVISERS—31 PERCENT
"Only advisers, but not troops" (16 percent).

"Train Laotians to fight for themselves" (5 percent).

"Communist threat must be met" (4 percent).

"Advisers might prevent a big war" (3 percent).

"Advisers would know how far to go" (3 percent).

WHY SEND U.S. TROOPS—19 PERCENT

"Must prevent spread of Communist aggression" (9 percent).

"Send in troops to win, get it over with" (4 percent).

"Finish what we started in Asia" (3 percent).

"Stop Communists there, instead of in U.S." (3 percent).

Mr. FULBRIGHT. What the Senate did, and what the President did, very obviously was approved by a large percentage of the silent majority of the American people. But I think the bombing remains to be answered, and I hope a spokesman for the administration who announced the other day that the administration favored the amendment adopted by the Senate, would find the answers to the question of the bombing and how much they anticipate and what to expect in this request.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. MANSFIELD. Mr. President, in my 27 years in Congress, I have never seen a more remarkable performance than that of the distinguished senior Senator from Louisiana (Mr. ELLENDER). He undertook the management of this bill on less than an hour's notice. He performed with distinction and credit. He had the answers and the information available for all the questions which were asked.

I want to pay my personal tribute to this Senator, who has performed with such integrity, distinction, and knowledge on such short notice in undertaking the management of one of the most difficult bills which will come before this session of the Senate.

So, to the Senator, I just want to emphasize my thanks and my gratitude; and I know I speak for all the Senate in the words I have just uttered.

I wish to pay tribute also to the members of the staff who worked so diligently on this bill, particularly Bill Woodruff, Fran Hewitt, Guy McConnell, and Ed Hartung.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

damage done to vast acreage of land in Virginia as a result of hurricane Camille.

Severe flood damage on August 19 and 20 where as much as 31 inches of rain fell in a 6-hour period caused property damage in 12 of our counties in excess of \$113 million and a loss of 150 lives.

This additional appropriation will finance conservation measures required to restore damaged stream channels and preclude further damage and loss of life in the affected area.

On behalf of the people of Virginia, I express appreciation to the Senator from West Virginia (Mr. BYRD) and members of the subcommittee for their favorable response to this request.

HELP FOR SMALL- AND MODERATE-SIZED BUSINESS

Mr. HART. Mr. President, I invite attention to a small but important item included in the supplemental appropriations bill.

The Senate Appropriations Committee recommends \$5 million be appropriated for the State technical services program within the Department of Commerce.

This program has received two 3-year authorizations, in each case the authorizations increasing from \$10 million in the first year, to \$20 million in the second year and to \$30 million in the third year.

The authorization for the program this year, its fifth, is \$20 million. The administration originally requested no funds for the program.

However, the Department of Commerce, using program funds, contracted with Arthur D. Little, Inc., of Cambridge, Mass., to evaluate the program.

I ask unanimous consent that the recommendations and conclusions of that study be printed in the RECORD at the end of my remarks.

In brief, the recommendation is that the program should be retained and continued.

After receiving that report, the Department of Commerce requested \$5 million in this supplemental bill for this fiscal year, the minimum amount needed to keep the program operating.

Unfortunately, the House Appropriations Committee struck the item in its entirety.

My intention in speaking today is to applaud and support the action of the committee and to urge the Senate conferees to fight hard to maintain the full amount approved by the Senate.

The purpose of the program is "to place the findings of science usefully in the hands of American enterprise." This aid is most useful to small- and medium-sized businesses which cannot afford major research undertakings. The information supplied has been developed at Government expense and is available to the public.

The Michigan program costs \$450,000 a year, of which \$150,000 comes from Federal funds and the remainder from the State, industrial gifts and fees and in-kind services supplied by participating colleges or universities.

Eleven universities and colleges participate in the system, which is coordinated from a central office in East Lansing.

Let me give an example of how the program works in Michigan.

A small firm in my State produces a laser beam device used in siting the installation of sewerlines. The company was too small to have a full testing program, and was therefore surprised to learn after having sold a number of the devices that certain atmospheric conditions deflected the laser beam. Purchasers of the device were complaining and making claims for repayments.

The firm was unable to solve the problem and was, I am told, in danger of going out of business. By chance, one of the STSP directors learned of the problem. While the particular college at which he was located could not come up with the answer, he fed the problem into the system. A physicist at another institution supplied the answer, the defect was corrected, and the firm was able to continue in business.

This is a perfect example of how the State technical services program, operating in 46 States, helps small- or medium-sized businesses to compete with the giants of industry. At a time of growing concern over the concentration of economic power, it would seem a wise investment, indeed, to put \$5 million into a program which helps get the latest scientific breakthroughs from the laboratory to small- and medium-sized businesses.

Once again, I applaud the action of the Senate Appropriations Committee, in particular, the Senator from West Virginia (Mr. BYRD), the chairman of the Supplemental Appropriations Subcommittee. I hope that other Senators will join me in urging our conferees to hold fast on this item.

There being no objection, the item was ordered to be printed in the RECORD, as follows:

II. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS
SUMMARY

Our evaluation of the STS program shows it is providing a useful and economic service in transferring technology which substantially benefits the nation. The program can be made more effective and costs reduced by concentrating the federal and state investments in efforts and services which yield the most returns. We recommend that the STS program receive continued Federal and State support with increasing emphasis on direct service to industry.

Detailed conclusions and recommendations are supported and amplified in the following sections.

B. CONCLUSIONS

1. Federal support justification

The program should receive federal support because—

Risks of innovations necessary for industrial growth are spread across a large number of companies;

Increased tax returns are obtained from successful innovations which the program helped develop; and

Social benefits are an important product.

A major block to innovation by small firms with limited technical resources is the high risk associated with the cost of technical assistance in solving problems.

A major contribution of the program to economic development is the distribution of the costs of high-risk innovation.

2. Program benefits

The program is meeting its goals by providing technical services which result in both primary and secondary economic and other benefits to the nation.

SUPPLEMENTAL APPROPRIATIONS,
1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. SPONG. Mr. President, I am pleased that in this supplemental appropriation bill there is an additional appropriation of \$3,700,000 for emergency conservation measures for runoff retardation and soil erosion prevention in Virginia. I testified on behalf of this appropriation before the subcommittee. These funds are necessary as a result of

In general, the program produces economic benefits which are greater than its cost, but the benefit-to-cost ratio can be improved.

We estimate that expected tax returns to federal, state, and local governments based on increased economic activity generated by the program will cover its cost.

Most of the successful cases interviewed produced significant secondary economic and social benefits in addition to primary benefits, such as increased sales and new jobs, and cost savings.

The program has been most helpful to small and medium sized firms which do not have broad technical and research capabilities.

The program has provided useful technical services to firms who would not or could not pay for such services.

An important effect of the program is increased awareness by program users of external technical resources and how to apply them.

3. Program content

Field services, including referral, are the most valuable part of the program. Information and educational services are secondary and discretionary activities.

In each year, a few successful cases will produce most of the benefits, while the majority of cases produce little or no benefit, which is typical of activities involving innovations.

It is not possible in most cases to predict whether a user will benefit from services.

Technology transfer was an important ingredient in almost all interviewed cases. The technology transferred was seen as new and valuable to the user, although it may have existed elsewhere for some time.

Problem-solving services provided under the program do not conflict with those available from other private or public sources.

Successful STS program personnel are aggressive risk-takers who are willing and able to make informed judgments on technical and business issues, and to commit resources in situations where a successful outcome cannot be predicted.

4. Areas for program improvement

Communications between states can be improved to facilitate more complete exploitation of useful results and technique. The OSTS has a unique contribution to make in such communication.

The program only partially benefits from other Department of Commerce activities which are directed to stimulating the growth of the economy.

C. RECOMMENDATIONS

The information we have obtained and the conclusions drawn from them have led us to make the following recommendations:

1. The program should be retained and federal support continued.

2. Problem-solving services to industry which do not participate in federally-sponsored R&D programs because of small size or nature of industry should be the central activity of the program.

3. Field services which are oriented towards problem-solving should receive increasing emphasis through increased budgets and more personnel.

4. Education, information services, and demonstrations should be de-emphasized and only used as discretionary activities in support of need-oriented field services.

5. Federal funding levels should be increased gradually in a manner which permits new personnel to be adequately trained.

6. The funding formula for the states should be revised and expanded to take into account need factors, as well as performance.

7. The OSTS should design and institute a management information system to provide continuing evaluation of program effectiveness and direction, particularly with respect to economic effects and benefits.

8. The OSTS should play a stronger role in defining and guiding program activities and methods, including program evaluation.

9. The Department of Commerce should establish regional offices for improved communication and coordination of activities between the states.

10. Organizational and geographical location of STS field offices should be reviewed in the light of increased emphasis on field services.

11. The state directors should have more flexibility in the use of funds.

12. The Department of Commerce should review other activities (such as documentation, information, and educational services) which parallel the services of STS to eliminate duplication and promote increased working cooperation.

13. The Department of Commerce should continue to obtain interview-based case histories and comparative economic studies to determine the economic benefits resulting from industrial innovations and how to maximize them through technology transfer programs.

RECESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate stand in recess, awaiting the call of the Chair, with the understanding that the recess not extend beyond 10 p.m. tonight.

There being no objection, at 9 o'clock and 35 minutes p.m. the Senate took a recess, subject to the call of the Chair.

On the expiration of the recess, at 9 o'clock and 52 minutes p.m., the Senate reassembled, and was called to order by the Presiding Officer (Mr. Moss in the chair).

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum. Before anyone answers to his name, I suggest that the attachés call all Senators so they may be here for a vote which will take place shortly.

The PRESIDING OFFICER. The attachés will notify all Senators that there will be a vote shortly.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, first, I wanted to apologize to my colleagues for the delay which in effect they have been forced to undergo this evening without knowing—the reasons beforehand. I hope they will understand the position in which the leadership found itself, after a brief statement which I will make, and which I am sure will be joined in by others, including the distinguished Senator from Washington (Mr. MAGNUSON) and the distinguished Senator from Louisiana (Mr. ELLENDER) on our side of the aisle, and others on the other side of the aisle. So I do wish to apologize to all my colleagues for this inconvenience. I can only say, in extenuation, that an unusual circumstance arose which we thought was entitled to some consideration.

Mr. President, the Senator from Nebraska (Mr. HRUSKA) is introducing an extension of the continuing resolution, at the request of the President of the

United States, with reference to the Labor-HEW appropriation bill. As I understand the situation, the President feels that he will be compelled to veto the bill in its present form at the present time. He has therefore requested the leadership of the House and the Senate to defer final approval of the bill until Congress returns in January. An official letter confirming this action will be in the hands of the leadership of the House and Senate this evening.

That is all I have to say at this time. In addition to the Senators from Louisiana and Washington, the distinguished Senator from Rhode Island, on this side of the aisle, was also involved and in attendance at the meetings which have been held during the past several hours.

Mr. HRUSKA. Mr. President, I have an amendment at the desk. I ask that it be read.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read as follows:

In line 7 page 15 change the period to a comma, and insert "except that subsection (c) of Section 102 of P.L. 91-117, as amended, is hereby repealed, and in lieu thereof the following is inserted, "(c) January 30, 1970, whichever first occurs".

Mr. HRUSKA. Mr. President, I ask for the immediate consideration of the amendment.

The PRESIDING OFFICER (Mr. Moss in the chair). Without objection, the Senate will proceed to the immediate consideration of the measure.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. HOLLAND. Mr. President, does this refer solely to the bill mentioned by the majority leader, or does it continue the whole of the continuing resolution?

Mr. HRUSKA. The way the amendment is drawn it is a general amendment of the continuing resolution which is contained in the bill and it, therefore, would cover any contingency of any of the pending appropriation bills which have not yet been signed, and which might be vetoed, but as far as we know, the only intention of the President is the veto of the Labor-HEW appropriation bill.

Mr. HOLLAND. Am I correct in my understanding that the existing continuing resolution provides that if an act is passed, it becomes effective—

Mr. HRUSKA. On enactment.

Mr. HOLLAND. And the continuing resolution applies only to those not enacted.

Mr. HRUSKA. That is correct.

Mr. MANSFIELD. But specifically it applies to the Labor-HEW appropriation bill.

Mr. HRUSKA. I might suggest that I be permitted to give an explanation. Then I would be glad to entertain questions. From time to time during the course of the year continuing resolutions have been approved by Congress, in order to provide for the funding of departments and agencies for which regular appropriation bills have not been enacted prior to July 1, which is the beginning of fiscal year 1970.

The present continuing resolution has

for its latest effective date the sine die adjournment of the first session of the 91st Congress. That is provided for in the language which we will repeal and for which we will substitute new language.

The result of that repeal and the substitute language inserted extends the time for effectiveness of the continuing resolution until the date of enactment of any appropriation bill which fails of enactment prior to sine die adjournment, but not later than January 30, 1970. So the latest termination date in the continuing resolution, as amended, will be January 30, 1970, instead of sine die adjournment, as it now exists.

This amendment, which was read, will be inserted at line 7 on page 15, and it simply says:

In line 7, page 15, change the period to a comma, and insert "except that subsection (c) of section 102 of P.L. 91-117, as amended, is hereby repealed, and in lieu thereof the following is inserted: '(c) January 30, 1970, which ever first occurs,'."

Mr. MANSFIELD. Mr. President, may I say that those who participated in the several meetings which have been held did so with some degree of apprehension, to be honest, with a recognition of the situation in which the Senate finds itself, and with the knowledge that if this is to become effective it will take the approval of both Houses. Whether or not that will be forthcoming still remains to be seen.

I understand that the letter I have indicated from the President of the United States is on its way to the Capitol at this moment. Whether or not the letter will be satisfactory remains to be seen.

But it seemed to those of us who participated in these discussions that as a result of a direct request from the President of the United States we should give the President the consideration which is due him in his office and in his responsibilities, even though we might have some apprehension as far as we were concerned as to our particular responsibility in this matter.

We feel that the amendment which is now at the desk extending the continuing resolution is not so binding that if an agreement is not reached in both Houses it would still be valid—it would not. But we felt also that in view of this request by the Chief Executive of this Nation that we, as responsible Members of the Senate, ought to give that request the consideration which it deserved. Such consideration, I might say, should be accorded to any President of the United States.

I hope we have done the right thing. We have acted in good faith. I am sure that the President has acted in good faith. Every option, in my opinion, remains available to the Senate and to the Congress. The President simply has indicated quite strongly through intermediaries that it will be his intention to veto the Labor-HEW appropriation bill in its present form. We take him at his word.

May I add, at the same time, that the Senate passed a Labor-HEW appropriation bill that it regards as on the whole very good and vitally needed.

It is true that it contains funds which

are not controllable by the President and which he must spend, of course, because of the law. He cannot impound many of those funds.

I believe that is the crux of the question. The President is interested in curbing inflation in this country. He has singled out this particular bill as one that incorporates excessive amounts for the particular programs covered. That is his prerogative as President. However, I think it should be brought out at the same time that some of the excessive amounts in the bill were incorporated at the request of the President of the United States, and I refer specifically to a \$2 billion request for OEO.

Mr. MAGNUSON. And \$1.117 billion for advance funding.

Mr. MANSFIELD. And \$1.117 billion for advance funding.

But the President has now made this request to curb inflation in this fashion and has made his intentions known to the Congress.

It was on that basis, after long and serious consideration, that the members in the conference agreed to undertake this action tonight. I must take full responsibility on this side for what has occurred. I feel that I ought to make a fuller report to members of the Democratic Party, and because of that I am calling a caucus of the Democrats at 9 o'clock tomorrow morning in room 207.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. PASTORE. I think it should be clearly stated that there is nothing in this program which compels us to vitiate, compromise, or change any of our express decisions thus far. As far as I know, the conferences will be held beginning tomorrow but all we are being asked to do, before we culminate the final decision on this bill, is that we wait until we return in January after the Christmas vacation.

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. SCOTT. Mr. President, I think the matter has been well and properly stated by the distinguished majority leader and by the Senator from Rhode Island. We would serve no one's cause here if we were to engage either in any defensive or exculpatory statements, or any attempt to indicate either regret or blame. The House and Senate, in the normal legislative processes, have proceeded to work their will. In the items of funds to permit the operation of the OEO, both political parties, in this body, and in the other body, have felt that the war on poverty cannot be conducted without funds, that we cannot ease the condition of the disadvantaged, the left behind, or the unfortunate, unless we commit the Federal Government. In this the administration has played its part.

There are other areas where there have been legitimate and understandable differences in both parties which are not really partisan. But the differences have led to an excess of zeal arising from the finest of motives. But they have, nevertheless, led to an excess, also, of expenditures which we here are advised the Pres-

ident finds unacceptable in the amounts added in the other body and in the Senate.

Therefore, nothing happens in what we now propose, except deferment in action, so that we will not, through any form of precipitating a confrontation, cause a disastrous effect on the innocent. We are not going to deprive the family assistance program of funds. We are not going to cut off caseworkers without salaries. We are not going to say that because Congress has not acted, or because the President has acted, the work of the Government cannot go on.

What we are saying is that, recognizing the conditions under which we presently find ourselves, we simply ask the understanding of the Members of this body, and of the other body, to permit us to defer whatever action the Executive takes it to the 19th of January, rather than having it occur now.

In this, I am in entire agreement with what the distinguished majority leader has said, and I thank him and the Senator from Rhode Island (Mr. PASTORE) for their explanations.

Mr. BAYH. Mr. President, will the Senator from Montana yield for a question?

Mr. MANSFIELD. I yield.

Mr. BAYH. I have not had the experience that other Senators have had as to a reasonable interpretation of the amendment, but I wonder, am I correct in believing, that by that resolution, it will be at the same rate presently expended for this?

Mr. MANSFIELD. Yes, indeed. That is understood.

Mr. BAYH. The Senator from Washington (Mr. MAGNUSON) has done such a magnificent job, and a very patient job, I must say, as have Members of both parties, although we have differences of opinion on both sides as to what should be done. But the Senator from Washington has done a great job, and I think that he should be complimented for it.

I should like to ask, is there any need for us to act this evening? Could we not wait until tomorrow to see what the differences might be between the present rate of expenditures and that to which the President objects? I think that the Senator from Pennsylvania and the majority leader do not want to get into a confrontation that will precipitate a departure from those—we do not want the result that he mentioned. Is it necessary for us to pass it this evening without any chance to compare that ourselves?

Mr. MANSFIELD. No, it is not necessary, in the opinion of the Senator from Montana. But I am frank to state that it would be advisable, in view of the informal commitments which have been made.

Mr. MAGNUSON. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I am happy to yield to the Senator from Washington.

Mr. MAGNUSON. I was a little bit concerned about all of this tonight, because we are having a meeting of the conference on HEW tomorrow, and we could resolve it and come back to the Senate with a report.

I do not know what started this, or

why HEW was singled out for this proposed veto of the President. Some of the amounts, as the majority leader has stated, are so-called uncontrollables. They are amounts which Congress has directed to be passed on, such as welfare assistance to the States—social security is in this, and we OK'd that.

I sit in on these conferences with the majority leader and the rest of us, and they will agree with me, that before I would agree to any such resolution—I personally do not know what the Senate would do—I want a letter from the President of the United States, in black and white, saying that he will veto the HEW bill. Then, of course, we have the practical proposition, if he is going to do that, whether he would call us back and have us go all over it again. We would probably end up with the same result. I am sure it would not change at all. We would come back here right after the holidays, or right after Christmas. I have some responsibility for the comfort of my colleagues, including myself. But all of a sudden, tonight, they show up and they will veto the HEW bill; they want us to let it go; have a conference tomorrow; report it out; and then leave it here.

I am not going to be irresponsible to hundreds of millions of people in this country who are dependent upon this bill, and for holding the bill up unless the President of the United States says he will veto it. Then it becomes his responsibility. I think there is no Member of the Senate that would not agree with me on that.

The President says that he will send a letter up here. I am looking forward to it. I told him that in his letter—and the majority leader will agree—he should spell out what items in the HEW bill he is against, and what items he believes are excessive. Are they items in cancer research? Are they items such as family assistance, which the Senator from Pennsylvania just said we are not going to defer?

Well, is that too much?

What about family planning? Clinical research? Health manpower and medical research? Community colleges or vocational education? Libraries or student aid?

I do not know what this veto is all about. Why pick on HEW? But I think that the President has the responsibility. He surely has the authority. If he thinks that HEW's budget is too big, and that he should veto it, then the Senate will come back and work its will.

As a practical matter, if he wants to call us back the day after Christmas, that is all right with me. I happen to be directly involved in this. I shall not like it. No one in this Chamber will like it, of course.

But I want a letter from the President of the United States telling me—and I want to make it public—that he will veto the HEW bill. I would like to have some definitions and specifics.

Mr. YOUNG of North Dakota. Mr. President, will the Senator from Washington yield?

Mr. MAGNUSON. No, I will not yield. I am one that is most concerned on this.

People will say to me, "Why did you not take the bill out?" We could get the bill out tomorrow. We are all ready. I would like to send it down there and have him veto it, which the President has a right to do. The President may have some good reason to veto it. I hope that he will specify what he is against, what he is for, and why the bill is excessive.

The amazing thing about it is that all the money amendments to the bill were passed in the Senate by votes of 2- or 3-to-1. The extra billion of dollars in title I was put in by the House, by a great majority. Thus, Congress has been working its will.

Someone suggested tonight that we should have a little more time to let Congress work its will. That is what we have been doing for weeks.

I do not wish to discommodate any Senator. I suppose the resolution would be a stopgap. The people in conference agree that if we do not get the letter, this does not go, does it?

Mr. MANSFIELD. No. This is contingent on the letter which I understand is on the way up.

Mr. MAGNUSON. Mr. President, what we are talking about is \$1,529 million over what the budget recommended. We are not far over the House figures. I could name impacted areas and a lot of other items. That is what Congress wants. The Congress is the place to appropriate the money. The President has the right to veto the bill if he does not think it is right, but he has no right to say to Congress, "I am not quite ready to veto it. I want you to hold it up until you get back. I do not want to take your vacation away from you."

I do not think Congress should be responsible for delaying this, including billions for the welfare of the country, unless we know he is going to veto it and we have to reach a practical solution.

Mr. McGOVERN. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. McGOVERN. Did I understand the Senator to say the bill is \$600 million above the amount requested by the administration?

Mr. MAGNUSON. No; there is \$600 million they can control.

Mr. McGOVERN. What is the difference between the administration's request and the amount in the bill?

Mr. MAGNUSON. The difference is about \$1.530 billion.

Mr. McGOVERN. It is \$1.5 billion?

Mr. MAGNUSON. From the revised budget requests, but a request for \$3 billion was sent up by the administration itself.

Mr. McGOVERN. So it is \$1.5 billion above?

Mr. MAGNUSON. This happened so suddenly; we are getting the figures and I will put them in the RECORD. The Senate bill, as passed yesterday, was \$1,529,266,000 over the President's revised and amended budget.

Mr. McGOVERN. Is it not a fact that Congress reduced the defense requests sent up by the administration by somewhere around \$6 billion?

Mr. MAGNUSON. I would have to defer to the Senator who handled the

defense appropriation bill for an answer to that question.

Mr. ELLENDER. It is almost \$9 billion from the Johnson budget.

Mr. McGOVERN. \$9 billion?

Mr. ELLENDER. From the Johnson budget, and \$5 billion from the Nixon budget.

Mr. MAGNUSON. We are \$1.5 billion over the so-called revised budget, and we are somewhat more over the Johnson budget. That was all voted by the House and the Senate, many of them being yea-and-nay votes.

Mr. McGOVERN. I think, to keep the matter in perspective when we are talking about the inflationary impact, the country ought to understand that taking those two bills, the Defense Department appropriation and HEW appropriation, the Congress has reduced the total amounts for those bills five or six times the difference in the HEW bill. We saved five or six times in the Defense sector what we have spent on HEW.

Mr. MAGNUSON. I am not going to discuss what we have done here or there; I have learned from being on the Appropriations Committee that if we cut \$1 billion from this bill, it does not mean it is going to be added to other items. Each item must stand on its own merits.

That is what Congress decreed. We have not had a conference. We will have a conference tomorrow between what the House and Senate provided. Conferences usually split the amounts down the middle. I think we have a pretty good bill to take care of the needs of the country. I do not know why this bill should be singled out for a veto, but that is the President's prerogative.

I would take \$600 million out of the foreign aid program instead of this one if I were personally running the budget, which I am not; but that is a different story.

What I want to say is that I want some definite assurance, in black and white, that he is going to veto the bill as it now stands, or as it will stand tomorrow afternoon.

Mr. SCOTT. Mr. President, if the Senator will yield on that point—

Mr. MAGNUSON. \$543 million was added on the Senate floor, by the vote of the Senate.

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. MAGNUSON. In just a minute. If the President says he is going to veto it for certain, and why, and what items are too high or what items are too low, or how far we went over the budget, or whether the House did the wrong thing, or whether we agreed with the House, then we would have a practical problem and a resolution of the problem probably should be forthcoming and adopted. But it should be based on the fact that we get the assurance that he is going to veto the HEW bill.

Mr. SCOTT. Mr. President, if the Senator will yield, I have just been informed that the President will send a message—I am told within the next 30 minutes—and we will have his message regarding his veto. Beyond that, I am no more able to read the executive mind than the Senator from Washington. If the Senator

will be around for 30 minutes, we will have a letter.

Mr. MAGNUSON. I will be here until it is finished, if it takes to New Year's Eve.

I would like to have time out, just like everybody else, but I do not know why at this last minute somebody says he is going to veto the HEW bill. I say, "Why are you going to veto it? What item do you disagree with?"

I cannot get that information. I doubt if the letter will give me that information. I hope it does.

Mr. YOUNG of North Dakota. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. YOUNG of North Dakota. I think an explanation should be made. I heard earlier this evening on good authority that the President of the United States was going to veto the HEW bill. I took it on my own initiative to ask Bryce Harlow, the top assistant, and the Budget Director Robert Mayo to meet with us. It was not their request; it was mine. The reason I did so was that the only way we could forestall a special session right after Christmas was to amend the pending bill by putting a continuing resolution on it. That is why we had to act tonight. This was the only means to forestall having to convene right after Christmas. This was done at my initiative. The President did not ask for the meeting we had tonight.

Mr. MAGNUSON. Mr. President, the Senator from North Dakota, with his usual courtesy, came to me about 4 o'clock and said he was worried about it because he heard this. I said, "We are going to have a conference tomorrow. Why not wait until the conference tomorrow, because we will have a bill ready?" They gave us assurance that the President said he was going to veto the bill. I want it in black and white. I do not want to leave Sunday night and go wherever I am going and have all the educators, all the health people, the children in school, the social security people—everybody in America is involved in this bill. I do not want them to ask me "Why didn't you pass a social security bill?" If the President wants to hold it up, I want to say, "Don't talk to me. Send your letters and communications to 1800 Pennsylvania Avenue"—

Mr. PASTORE. 1600.

Mr. MAGNUSON. 1600. No, I am right—1800. That is where all these people working there give him advice. [Laughter.] I am right. It is 1800 Pennsylvania Avenue.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. HOLLAND. Does this plan involve any different date for coming back? I think we were told yesterday it would be the 19th of January. Will there be any change in that date?

Mr. MAGNUSON. The distinguished leadership can answer that. I do not know.

Mr. MANSFIELD. No; we will still be coming back on the 19th.

Mr. ELLENDER. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. ELLENDER. This has been said on two or three occasions: The conferees will meet tomorrow.

Mr. MAGNUSON. Yes.

Mr. ELLENDER. Even though this bill is amended, it would not preclude the Senate from taking up the conference report.

Mr. MAGNUSON. No.

Mr. ELLENDER. What this will do is simply give us a little holiday of about 3½ weeks. That is the purpose of it. It will simply defer passing upon the conference report, or the adoption of it, until after January 19, instead of this week. That is all it amounts to.

Mr. MAGNUSON. That may not necessarily be so.

Mr. ELLENDER. Let me say something further to my good friend from Washington: If the President should veto this bill, and we were in session now, we may not be able to override his veto; but if we wait until after the 19th and then come back here, with people desiring to have more money for their schools, and so forth, we will not have any difficulty in overriding the veto, if Congress acts upon it favorably.

Mr. MAGNUSON. I do not know. But the Senate ought to override the veto, because the majority of the money and programs that were put in the bill, the different items, were voted for overwhelmingly by the Senate.

Mr. HARRIS. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. HARRIS. Does not the Senator think we are dealing with such serious matters of national priorities in this bill that it does not require action tonight? Could we not wait and see what is in the President's message and, as the distinguished Senator from Washington has said, find out whether it is education, research, health, or what it is that is objected to, and then we will have an opportunity tomorrow, perhaps the conferees could go ahead and get a report back, and we would not need to act on a matter of such momentous importance to the country as this bill is, if we are interested in national priorities, tonight?

Mr. MAGNUSON. Well, I would like for that to happen. The Senator did not mention a couple of other programs. Pollution—air and water pollution—are in this bill.

Mr. HARRIS. That is right.

Mr. MAGNUSON. If the President wants to veto that, I would like to know, but I do not know what he objects to. He has a perfect right to object to them, but we are talking about a comparatively small sum in this great field of health, education, and welfare, as compared to other things. They ought to stand on their own feet, but I think, with a trillion dollar gross national product—I should not mention the word "trillion"; I do not understand it. \$999 billion I understand better.

I think the House of Representatives and the Senate overwhelmingly, in most cases, suggest these things should be done. We are the custodians, we are the ones who have to determine what money is appropriated. We ought to have that consideration, at least until we have

the conference report, and see where we are. But this will be the last appropriation bill. I am not opposed to the resolution of the Senator from Nebraska, but I want it at least understood—and I am sure I do not have to worry about the word of the Senator from Nebraska, his word is as good as his bond—that unless this letter comes, and unless the letter is specific on what he objects to, we will not know what to do. I would like to have it. Maybe in the conference we could use it tomorrow. I would like to know what he is opposed to.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. MAGNUSON. Will this resolution then be dropped?

Mr. HRUSKA. No, that is not true.

Mr. MAGNUSON. Then here we are again.

Mr. HRUSKA. No, we are not. Let us recall the agreement. The agreement was that we would pass this amendment, and we would pass this bill. The enactment of the bill with this amendment would not stand in the way of either course of action which is in contemplation, either the submission of the conference report tomorrow, and voting on it tomorrow, or a deferment of action until January 19 on that conference report, when we come back.

If the bill is enacted tomorrow, the resolution falls; there is nothing for it on which to operate. If it is enacted, we shall have HEW funded between the time we adjourn sine die and the time we return on January 19. I am sure all the Members of this body would want that contingency taken care of.

Mr. MAGNUSON. By all means; we want to keep going at least at last year's level, if not the House allowance level.

Mr. HRUSKA. That is correct.

Mr. MAGNUSON. But the President has 10 days, as I understand it, to veto a bill.

Mr. HRUSKA. Surely.

Mr. MAGNUSON. Suppose we decide to pass the bill, and 10 days from tomorrow night—when we can get the bill out, I am sure—if 10 days expires, we are back in the same position. Therefore, the Senator's resolution is more important.

Mr. HRUSKA. It would not stand in the way. It would operate if the bill is not enacted. If it is enacted, it falls. But I suggest it would be advantageous to act on this bill tonight, because then we can have our conference tomorrow, and make a conference report on this bill tomorrow.

Mr. MAGNUSON. But if the President does not send up the letter—

Mr. HRUSKA. Oh, he will send up the letter.

Mr. MAGNUSON. But what is he against?

Mr. HRUSKA. Well, that is something that—

Mr. MAGNUSON. I do not mean item by item, but is it the National Institutes of Health, too much money for health? I want to know.

Mr. HRUSKA. The Senator from Washington wanted to be sure whether the bill would be vetoed, so we could take this action, and this continuing resolution amendment is necessary, if the bill

is to be vetoed, in either contingency. The letter will be forthcoming.

Mr. HARRIS. Mr. President, will the Senator yield?

Mr. MAGNUSON. I want to look at the letter.

Mr. AIKEN. May I ask a question?

Mr. MAGNUSON. I want to look at the letter, because I am not going to be responsible for delaying the HEW bill unless the President of the United States says in no uncertain terms why he opposes the bill.

Mr. HRUSKA. Mr. President, if that letter is forthcoming, all responsibility for this will rest on the man who says he is going to veto the bill, and it will absolve completely the competent chairman of the Subcommittee on the Health, Education, and Welfare appropriation. In the instant that the letter is sent over, the responsibility will be transferred to 1600 Pennsylvania Avenue.

Mr. MAGNUSON. Ho, ho, ho. Not with every educator in town, and every retired person, and everybody, stopping me on the street and saying, "Why didn't you pass the bill? We don't know what we are going to get, we don't know what we are going to have, we don't know what is going on in social security, medical research, and health"—they are going to come to me, and I am going to refer them to 1600 Pennsylvania Avenue.

Mr. HRUSKA. And the Senator from Washington, being the articulate man he is, will say, "The bill is not passed because I got a letter from the President," and in the meantime, the department will continue to function on the continuing resolution.

Mr. MAGNUSON. Well, I am going to have a lot of copies made, because some people will not believe what I say.

Mr. AIKEN. Mr. President, may I ask the Senator from Nebraska a question?

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. MAGNUSON. I am going to get a machine and have copies made.

Mr. AIKEN. Does the continuing resolution apply to every appropriation?

Mr. HRUSKA. Yes, it is in general language.

Mr. AIKEN. And there is no assurance that the foreign aid appropriation will ever become law. Inasmuch as the foreign aid passed the House of Representatives by a vote of 200 to 195, and that is a very small margin indeed, tomorrow being Friday, we do not know whether the conference report will be approved by the House of Representatives. If it is not, we must have this continuing resolution, or else all foreign aid expenditures will stop.

Mr. HRUSKA. The continuing resolution, as amended, will apply to any and all agencies for which a regular appropriation bill is not passed by sine die adjournment.

Mr. AIKEN. I think it is very important to have this resolution.

Mr. HRUSKA. It is, indeed.

Mr. AIKEN. And I am not thinking of HEW; I am thinking of other appropriations.

Several Senators addressed the Chair.

Mr. MAGNUSON. Mr. President, I have the floor, do I not?

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. MAGNUSON. Just a minute. I am not objecting to the continuing resolution. The only thing I want to be sure of is that if there is no HEW appropriation, on which the conferees are ready to report to the Senate and send the bill to the White House tomorrow or Saturday morning, and if foreign aid, as the Senator mentioned, is not ready, that it was not the fault of the Congress of the United States. The President says he is going to veto it.

The President says he is going to veto it.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. MANSFIELD. Mr. President, if the resolution in the nature of a continuing resolution is adopted tonight, insofar as the conferees are concerned it will make not one bit of difference.

Mr. MAGNUSON. I hope it will not.

Mr. MANSFIELD. It will not, because the conferees will get together, as they had previously decided to do, to try to reach an agreement. Every option is preserved. If they decide, in the light of the President's letter, that they want to bring that bill up on the floor of the Senate tomorrow, it will be brought up.

What we are doing is acceding—if we do—to the request of the President of the United States. That is all. And that does not mean that the bill will not be brought up in this body or the other body, or both bodies, nor that it will not be up before Friday night or Saturday night. Those prerogatives remain.

This action is being proposed at the specific request of the President of the United States. I have some apprehensions, but I am prepared to take my share of the responsibility to face up to this matter and to vote on the resolution tonight. It is not only up to me; it is up to the Senate.

Mr. SAXBE. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. SAXBE. I am going to vote against the continuing resolution. It is not the President's fault that this bill is coming out late in the session, when every Senator wants to go home. If we had done our job last summer and had got the bill out at a reasonable time, it seems to me that we would not be fighting against time now.

I think it is our responsibility to do what we are paid to do and to stay here, if we have to be here on Christmas day to work this matter out.

Mr. MAGNUSON. I do not think the bill would be any different if we had brought it out in August than it is today. It contains the right amounts. I do not want to get into an argument about this, because the Bureau of the Budget kept sending items up. As a matter of fact, the last item sent to us was on November 14. I think this results from a combination of many circumstances.

If the Senator from Ohio would ever sit there and listen to the conference on the HEW, he would understand it. It is amazing. One can hardly believe it.

Mr. HARRIS. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. HARRIS. Mr. President, what would we gain by passing a continuing resolution tonight? Is there something that would happen between now and 12 that would not be able to happen tomorrow after we had had an opportunity to see the President's message?

Mr. MAGNUSON. Mr. President, I follow the judgment of the leadership. And if we have a continuing resolution, we will have to have it on this particular bill.

Mr. HARRIS. Does the Senator think that the conference committee will meet on the supplemental appropriation bill tonight?

Mr. MAGNUSON. I do not know. I know the HEW conference will meet at 10 o'clock tomorrow morning. And the House and the Senate are not very far apart. This is the amazing thing.

I do not know what will happen in the House. I know what will happen if the President vetoes the HEW bill.

Mr. HARRIS. Mr. President, I do, too.

I do not think there is any reason for the Senate to act in advance. I do not see any reason at all for acting tonight. I do not see any reason for passing the continuing resolution.

Mr. MAGNUSON. Mr. President, I yield the floor.

Mr. HARRIS. I believe we would be well advised to wait.

Mr. MANSFIELD. Mr. President, I have been informed that the letter will be here within the next 20 minutes, hopefully.

I would again emphasize the fact that we are not giving up any of our responsibilities or our prerogatives. We were asked to consider certain factors. We did so. There was much discussion in the consideration of these factors.

And may I say to my colleagues that as far as I am concerned, and I think I have stated this previously, I am prepared to come back at any time—next week, the week after, or next month—to face up to a veto or to attend to the unfinished business of the Senate. What we decide to do here tonight will not change the prospects ahead by a fraction.

I think we have made a reasonable proposal to our colleagues. I think it ought to be acted on tonight. It ought to be decided.

I see nothing to be gained by going over until tomorrow. And as soon as that letter comes up, I want to read it immediately.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. PASTORE. Mr. President, I think we ought to clear up the point raised by the distinguished Senator from Oklahoma. The decision of the President to veto the bill does not depend upon the outcome of the conference tomorrow.

Mr. STEVENS. Mr. President, will the Senator speak up I cannot hear him.

Mr. PASTORE. Mr. President, I am surprised that PASTORE cannot be heard.

Mr. SCOTT. It is a long way from your aisle to Alaska.

Mr. PASTORE. Mr. President, the decision of the President, as I understood the conference this evening, does not depend upon the outcome of the conference tomorrow. The President objects to the amount that was passed by the House, which was increased by the Senate. So insofar as the conference is concerned, that is not the controlling factor.

As I understand it, the President is determined to veto the bill anyway. However, realizing the fact that next Thursday is Christmas day and realizing the fact that if he vetoes the bill now, we will be compelled to come back soon after Christmas; and if we cannot override a veto, we will have to begin to work on a new bill.

And while we are doing that, we will have to pass a continuing resolution.

At any rate, taking all of those factors into account, the President has said:

I don't care what you do after January 19. I am going to veto the bill if it comes out in the present form.

If he is overridden, we have no problem. On the other hand, if he is not overridden, we will have to sit down and begin to work on a new bill.

And while we are working on the new bill, we will have to have a continuing resolution.

The majority leader is a sensible man. He is not ready to sell out the Democratic Party. Nor is he ready to sell out the Senate of the United States.

The majority leader has looked into this matter very deeply. I have sat in the conference. I believe that this is a fair bill and that in all probability it should be passed and that the President should sign it. However, I am not the President of the United States.

I have been the Governor of a State. I have vetoed bills. I did not have to give my reasons for it. I vetoed bills because I said I did not like the amount.

That is all the President has to say.

As soon as he has said that, our only alternative is to override his veto. If we cannot do that, we will have to begin to formulate a new bill. And in that process we will have to have a continuing resolution.

That is how simple it is. The majority leader has made it plain. If tomorrow, after the conference, we remain insistent that we want to stay here and take our chances, we are not precluded from doing that. However, because we have the last appropriation bill before us, now is the time to add the continuing resolution.

I mean that is the last clear chance that we have. And that is all that the majority leader is asking us to do.

I think we are wasting our time here. Everyone is fussing around and talking about the merits. Let us not talk about the merits. Let us talk about the procedure.

No one is being denied a chance to exercise his judgment on the merits of the bill. One can exercise his judgment tomorrow, the next day, and as long as we are here.

The majority leader is asking us to be reasonable about this. And he has looked into the matter, and made a commitment, and he has said that all the leadership

hopes—and some of the members of the Appropriations Committee, including the illustrious chairman—is that we go along with the idea of the President. It is a Presidential request.

We have nothing to lose. So, let us go on with our business and cut out all of this fussing.

[Applause.]

Mr. MANSFIELD. Mr. President, may we have order?

The PRESIDING OFFICER. There will be order in the Senate.

Mr. MANSFIELD. Mr. President, if any of our colleagues have any suspicions that there are hidden gimmicks contained in this, I wish to state that if there are, the majority leader, the Senator from Montana, knows nothing about them.

All I know is that we have received a request from the President. That letter should be here shortly. I hope it will explain the situation, at least from the President's point of view.

We have tried to explain it from our point of view. It is not a happy situation but it must be faced up to.

My personal preference would be to face up to the bill, pass it, and take my chances on a veto. But I think any President who makes a request of the Senate is entitled to a reasonable and certainly a respectful consideration of what he requests. Even if the Senate agrees to the request its own prerogatives are preserved in fact.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. HOLLAND. Mr. President, I should like to mention one other thing, and that is that the conference committees on the HEW bill and this supplemental bill include quite a number of the same Senators from both sides of the aisle. We are going to have a conference in the morning; then we are going to have a conference on HEW. We could not possibly get to the conference on the supplemental bill until tomorrow afternoon at the very earliest, I say to my friend the Senator from Oklahoma.

It seems to me that, considering the practicalities of this matter, we ought to have both of these bills ready to move ahead after the conferences, which will be comprised largely of the same Senators, who cannot sit at the same time in both conferences, obviously.

I think that the thing to do is by all means as the majority leader suggests.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

SEVERAL SENATOR. Vote! Vote!

Mr. MANSFIELD. Mr. President, let us have order. After all, this is a request of the President.

The PRESIDING OFFICER. The Senate will be in order.

Mr. MAGNUSON. I know it is a request from the President, and this is very unusual.

Mr. MANSFIELD. Very unusual.

Mr. MAGNUSON. I have never known this to happen. Usually, the President does not veto a bill until he gets it. This is the most unusual request I have ever known. It is unusual, and perhaps it is

a more practical one, because we are in the time situation we find ourselves.

Mr. SCOTT. I think that is the reason.

Mr. MAGNUSON. I have never heard of a President saying that he is going to veto a bill before it is passed or is out of conference. This is the first time in the history of the United States. Usually, a bill is sent down and is vetoed, which is the President's prerogative. Sometimes he will threaten, but this is an unusual situation, and I guess we have to face up to the practicalities of it.

The Senator from Rhode Island said a little earlier that we have nothing to lose.

Mr. PASTORE. That is correct.

Mr. MAGNUSON. I will state what we have to lose, and this is why I want the letter. I hope it shows up. We have to lose this: The people of the United States are quite concerned about every portion of this bill, and they are going to say, "Why didn't Congress pass the bill? Why didn't you just pass it, and if the President wants to veto it, let him veto it?"

As a matter of fact, the bill could be sent down Saturday and he could veto it, and we could meet on Monday and work our will on it.

Mr. SCOTT. If the Senator will yield—

Mr. MANSFIELD. I yield.

Mr. MAGNUSON. Just a moment. We could do that, because we could get through with this conference very quickly and could send it to the White House and he could veto it, and we could vote on it.

The Senator announced that there would be a session on Sunday, did he not?

Mr. MANSFIELD. I raised the possibility, yes.

Mr. MAGNUSON. And I wanted a Lutheran minister. I need one, after this week.

The point is that we have a practical problem here, and I do not want to say that we have nothing to lose. We have a great deal to lose, if we are going to be blamed for not passing an HEW bill.

Mr. SCOTT. Mr. President, will the Senator from Montana yield to me?

Mr. MANSFIELD. I yield.

Mr. SCOTT. For a statement for elucidatory purposes.

I do not think anybody ought to rise after the Senator from Rhode Island has been so clear and so explicit. He has stated the case. But when the President's letter comes here, I think it is a proper and just surmise that, in effect, he is going to make it clear, first of all, that he is not telling the Senate what to do. He has served in the Senate, and he knows better than that. But he is going to say to the Senate, if the Senate agrees, that there are three alternatives, one of which the Senator just finished mentioning, one of which is to send the bill down immediately and receive an immediate veto; and then, in order to continue the functioning of the HEW and Labor Departments, the Senate will be under the necessity of returning during Christmas week.

Mr. MAGNUSON. No. We could do it on Sunday or Monday. The pen is there. He can use the pen, can he not?

Mr. SCOTT. The alternatives will be, first, the veto and the necessity for re-

turning, unless the Senate has acted to override the veto meanwhile—I will revise it to that extent, although that is not the way it will be in the letter.

Mr. MAGNUSON. Why can we not do it on Monday?

Mr. SCOTT. If the Senator will allow me to finish, in the same spirit in which I allowed him to be heard, I will reply.

I am glad to report that Sheridan has arrived from Winchester, and now I will be able to read the letter and state the alternatives.

May I ask the consideration of the Senate and be permitted to read the letter all the way through, because I want to read it myself.

Mr. MANSFIELD. I am delighted to yield for that purpose, Mr. President.

Mr. SCOTT. In effect, before I read it, three alternatives will be stated, all of which—unless the Senate overrides the veto before adjournment—require a continuing resolution. Does the Senate want a continuing resolution during Christmas week, or does the Senate want it now or on January 19?

Now I should like to read the letter:

THE WHITE HOUSE,

Washington, D.C., December 18, 1969.

Hon. HUGH SCOTT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCOTT: I feel obliged to inform the Congress, before adjournment, that the development of the HEW-Labor-OEO appropriations has been such as to compel me to veto these appropriations when they arrive on my desk.

I send this advance notice in order to afford the Congress, if it wishes, an opportunity to enact a continuing resolution for these agencies and thereby permit them to operate without the necessity of recalling the Congress in special session.

The HEW appropriations in large part involve mandatory Federal spending. Even the level of appropriations passed by the House of Representatives is more than \$1 billion above my budget request. The Senate increased the appropriations further by another \$6 billion. As much as I sympathize with the objectives of some of the programs for which the Congress has voted increased appropriations, I cannot, at this critical point in the battle against inflation, approve so heavy an increase in Federal spending.

The Congress, it appears to me, may meet this situation in one of three ways: first, by sending the Appropriations Act to me for veto, but then to return in special session immediately after Christmas; second, pass a continuing resolution for these three agencies, send the appropriations to me for veto, and then consider the veto after January 19; or, third, defer further action on these appropriations until after January 19, and provide authority to continue the current level of funding for these agencies in the interim.

The choice among these alternatives rests, of course, with Congress. In the interest of affording a respite for Congress, I suggest either of the continuing resolutions approaches. But, of course, should the special session route be preferred, I will cooperate.

Sincerely,

RICHARD NIXON.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

SEVERAL SENATOR. Vote! Vote!

Mr. MANSFIELD. Mr. President, we can vote.

Mr. HARRIS. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. HARRIS. Mr. President, I honor the sincerity of the majority leader, as does every other Member of this body. That is not the question, and I think there is still an unanswered question here, and it is this: Why is it possible that 10 minutes after 11, 1 minute following the reading of the message of the President of the United States, perhaps the most important bill considered by Congress this year, we could not lay this matter over until the morning?

May I disrespectfully disagree with the suggestion of the distinguished Senator from Nebraska that it is a question of who will bear the responsibility. That is not the question, Mr. President. The question is, What will become of the people who are served by this bill? I think this is far more a question of what this country is going to do with its priorities than it is a question of whether the President of the United States or Members of the Senate will bear the responsibility for it. I think that has been very well pointed out by the distinguished chairman of the committee as he has raised the question which we have not to this good moment heard the answer to—the question of why it is that the President of the United States desires to veto this bill, and what items in the bill he chooses to disagree with the Senate on. It seems to me this is a very basic kind of matter. I intend to vote against the continuing resolution because I think if the Senate does that it gives up a tremendous leverage it has.

I know no Member of this body will decide the fate of schoolchildren of this country, or the fate of those served by the health appropriations in this bill, or those served by antipollution funds in this bill, as pointed out by the chairman of the committee, on the basis of whether or not we will be inconvenienced. I shall not and I hope we will not take this action.

Mr. HUGHES. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. HUGHES. Mr. President, I would like to ask the question. If indeed, as the Senator from Washington stated, this is unprecedented and unknown before in American history, does anyone know if this has been done before?

Mr. MANSFIELD. Not that I know of.

Mr. MAGNUSON. I do not know. It came up so suddenly. I will ask the Library of Congress.

Mr. HUGHES. I do not know that there may not be a possible fourth alternative in light of the fact we are taking unprecedented action in connection with a bill none of us have seen in final form. The President said he is intending to veto the bill, although he has not seen it in final form. Perhaps this body could not consider overriding a veto of a bill none of us know about yet prior to the time that he presents his veto to this body.

Several Senators addressed the Chair.

Mr. MANSFIELD. I yield to the Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, I think this is an unprecedented action, but on the other hand never before to my knowledge has the

Senate delayed acting on appropriation bills until the week before Christmas.

I have listened with great interest to the concern of those who feel the amounts should be given to the educational institutions and other agencies. I regret they did not have that same desire before to give them that attention. If they had stayed in this country and done the job we would have had this out of the way.

Mr. STEVENS. Mr. President, I find interesting the comments of the Senator from Oklahoma. I agree 100 percent with the distinguished Senator from Rhode Island.

We are asked to continue the agencies in this bill at the same rate provided under the previous administration and by a Congress under the same leadership as we have here tonight. What was wrong with what was done a year ago that is not good enough to continue until next January 30? I cannot understand not supporting the distinguished majority leader and the distinguished minority leader at 11:15 at night in something everyone realizes must happen in any event. It seems to me the Senator from Rhode Island stated the matter clearly.

I cannot understand partisanship being brought into this matter by the Senator from Oklahoma in challenging the majority leader. I support the position of the majority leader as a courtesy to the President, and I would do the same thing if it were Lyndon B. Johnson.

Mr. KENNEDY. Mr. President, it is only with the greatest reluctance that I am going to vote against the continuing resolution. I think, as has been stated here by the Senator from Oklahoma, the Senator from Ohio, and the Senator from South Dakota, this bill involves many of the most important programs and questions that we have acted on this session.

It seems to me that to a great extent we are abdicating our responsibility by voting for a continuing resolution this evening. It seems to me we have an obligation, a responsibility based on what we have already done with this bill, the significant measures that have been voted upon by this body and sent to conference. We should not run out on that group before the conference, if we are going to accept our responsibility. If, in fact, the President does veto this measure, we will then have time to determine what further we should do as far as our final action is concerned. Even if we have to meet on Christmas Day or New Year's Day, we should not take the action suggested this evening.

We talk about enacting a continuing resolution which will abdicate our responsibility in one area, while at the same time we talk every day about regaining for the Senate its power in the field of foreign policy. I think the Senate will make a mistake if it agrees to this resolution this evening without taking any time to consider and reflect about the implications of our hasty action. That is just one issue we are confronted with tonight. What we are saying to the American people is that we would rather have our vacation starting Saturday night and not face this problem until we come back January 19. The matters in

this bill are much too important to accept that simple solution.

Mr. MANSFIELD. Mr. President, I would like to say a few words. I wish to say to my distinguished colleague from Massachusetts that in my opinion we are not abdicating one whit of our responsibility. I would not stand for it if I thought so. I can say that knowing what I say to be true. I would point out that every alternative remains.

The President has presented us with a suggestion. We do not have to be bound by what any President says because we are a separate and distinct part of this Government. We can, if we wish, meet tomorrow—and we will—and a bill will be reported by the conferees. The House can pass that conference report and so can we, with or without a continuing resolution.

As far as missing a Christmas vacation is concerned, I do not think that has entered into the mind of any Member of this body. I regret that the Senator believes it has. We are paid to work, and if need be, 365 days a year. Sometimes I think we take too much time off and complain because we are worked so hard and so long. Well, let me tell my colleagues that there are thousands of people in all of our States who would like to have this job and put in the long hours and undergo the hardships which it entails.

This resolution is a fair way to face up to such a situation as we are confronted with. It does not bind us in any way. We do not have to accept the resolution on the basis that we will consider a conference report in the latter part of January. We can consider it at any time. And the President can veto it at any time.

I think that what we ought to do is to face up to this matter and try to get a bill. We should leave it up to both Houses to do what they want to do, and act accordingly, and we should do it with or without a letter from the President of the United States.

Mr. COTTON. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield to the Senator from New Hampshire.

Mr. COTTON. Mr. President, as one who has been sweating with this bill for many weeks by the side of the distinguished Senator from Washington (Mr. MAGNUSON), I wish to say that I admire the executive ability, the force, the drive, and the analytical reasoning that he displays. He is a great chairman.

But this is the first year that the Senator from Washington has served as chairman of this particular subcommittee. I have been serving as the ranking minority member of the subcommittee for almost 10 years. I have been sitting in conferences between the Senate and the House for nearly 10 years. Next to the Defense appropriation bill, the Labor, and Health, Education, and Welfare appropriation bill is one of the most complex, complicated, controversial appropriation bills with which we have to deal.

The assumption that we are going to meet at 10 o'clock tomorrow morning and come back at 5 or 6 o'clock with everything settled and ready to put this bill on

the President's desk may be true—I hope it is—but unless human nature has changed during my experience in conferences, and in the longest, hardest conference I ever sat in, in 15 years in this body, last year, and unless the distinguished Members of the other body have suddenly ceased to become lions and have become lambs, that is not going to be—perhaps it will be—but it may not be—quite the simple performance that is being guaranteed.

As the statement that we should stay until Christmas Day or the day after Christmas or the day before New Year's Eve, we may find ourselves having brought this complicated bill to its final consummation, as Santa Claus is just approaching the chimney, and going to conference, and we want it to go to conference. I compliment the Senator from Washington; but we shall go to conference tomorrow.

But we were informed by the House that they would not go until 10 o'clock tomorrow morning. So we are going to conference in the morning. If this is going to be a simple vesper service, it will be the first time I have ever had the pleasure of attending. I am looking forward to it. Do not be so sure that we do not need to have an ace in the hole before we bring this last appropriation bill as a safeguard to see that those children, those families, those on welfare, and those working in the great Department of HEW get their pay and get their health without any cessation.

Let us be sensible. Do this thing now and safeguard them because we may be all through tomorrow night. We may not.

Mr. COOK. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. COOK. Mr. President, as a new Member, I have been pleased to listen to all of this discussion tonight, because it has given me a new insight into exactly how the Senate operates when it gets together at 11:20 o'clock at night.

It has amazed me to listen to the remarks of the Senator from Oklahoma and the Senator from Massachusetts, particularly the Senator from Massachusetts, when he said that what we are really trying to do is to preserve our vacations.

Well, Mr. President, I thought that the first day of the fiscal year for these United States began on the 1st of July. I might suggest that when the Senator went home in July, and when he went home in August, there was a continuing resolution; and when he went home in September and when he went home in October, there was a continuing resolution.

Now we are saying we cannot go home until the 19th of January without a continuing resolution because, somehow or other, Christmas is there and New Year's is there.

I am sorry that the headlines tomorrow will say that the distinguished Senator from Massachusetts blamed the Senate because he wanted a vacation, because that will be the headline.

But the continuing resolution has been there since the first day of July, not starting tonight.

I might suggest again that the first day of the fiscal year for these United States began on the first of July.

The hearings on HEW began on the fourth of August.

Thus, that is what we are faced with. We are faced with reality, gentlemen, not a bunch of demagoguery.

Mr. KENNEDY. Mr. President, will the Senator from Kentucky yield?

Mr. MANSFIELD. I yield. I have the floor.

Mr. KENNEDY. The Senator said something about December 31?

Mr. COOK. I did not say the 31st.

Mr. KENNEDY. We have all next week. We have until the 31st for any kind of continuing resolution.

Mr. COOK. Let me say to the Senator that I said the 19th of January.

Mr. KENNEDY. The point I was raising is that certainly we will have time to pass a continuing resolution other than at this time here. We have time to pass it. We will have time to pass a continuing resolution other than at this time here. We have time to pass it. We have time to pass it after the bill is on the President's desk. We have time to pass on that bill again, or try to overturn the President, if that is the will of the Senate. We still have time to pass a continuing resolution. To conclude, I believe that is the order in which we should proceed.

Mr. COOK. I might suggest that if the Senator really wants to do it—because I intend to vote with him—if he really wants to do it, I suggest he raise a point of order because I think this is legislation on an appropriations bill, and I think that would take care of it.

Mr. MANSFIELD. Mr. President, personally, I think it is up to each individual Senator to decide how he will vote. All I ask is that we be allowed the opportunity to vote. I hope that at this time we can vote on the pending resolution without further discussion.

Mr. SCOTT. We are ready to vote.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Pennsylvania will state it.

Mr. SCOTT. Would the Chair state the issue on which we are about to vote?

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Nebraska which is the continuing resolution amendment.

Mr. SCOTT. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Nebraska, which is the continuing resolution amendment.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. BIBLE), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUE), the Senator from Minnesota (Mr. McCARTHY), the Senator from Wyoming

(Mr. McGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), and the Senator from Ohio (Mr. YOUNG), are necessarily absent.

I further announce that, if present and voting, the Senator from Arkansas (Mr. FULBRIGHT) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Tennessee (Mr. BAKER), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from New Jersey (Mr. CASE), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. GOODELL), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from Illinois (Mr. SMITH) are detained on official business.

If present and voting, the Senator from Illinois (Mr. PERCY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 65, nays 10, as follows:

[No. 264 Leg.]

YEAS—65

Aiken	Fong	Murphy
Allen	Gore	Muskie
Allott	Gravel	Pastore
Bellmon	Griffin	Pell
Bennett	Gurney	Prouty
Boggs	Hansen	Proxmire
Brooke	Hart	Randolph
Burdick	Hatfield	Ribicoff
Byrd, Va.	Holland	Schweiker
Byrd, W. Va.	Hruska	Scott
Cannon	Jackson	Smith, Maine
Church	Javits	Sparkman
Cotton	Jordan, N.C.	Spong
Cranston	Jordan, Idaho	Stennis
Curtis	Long	Stevens
Dodd	Magnuson	Talmadge
Dole	Mansfield	Thurmond
Dominick	Mathias	Williams, N.J.
Eagleton	McClellan	Williams, Del.
Ellender	McGovern	Yarborough
Ervin	Miller	Young, N. Dak.
Fannin	Montoya	

NAYS—10

Bayh	Hughes	Moss
Cook	Kennedy	Saxbe
Harris	Metcalf	
Hartke	Mondale	

NOT VOTING—25

Anderson	Hollings	Percy
Baker	Inouye	Russell
Bible	McCarthy	Smith, Ill.
Case	McGee	Symington
Cooper	McIntyre	Tower
Eastland	Mundt	Tydings
Fulbright	Nelson	Young, Ohio
Goldwater	Packwood	
Goodell	Pearson	

So Mr. HRUSKA's amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BYRD of West Virginia. Mr. President, I ask for third reading.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed for a third reading, and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass?

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, may I announce again that there will be a meeting of Democrats in Room S. 207, but at 10 o'clock rather than 9 o'clock because, beginning tomorrow, we will have nothing but conference reports insofar as I am aware.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, instead of coming in at 10 o'clock tomorrow morning, when the Senate completes its business tonight it stand in adjournment until 11 o'clock tomorrow morning, at which time the Tasca nomination will be taken up.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPPLEMENTAL APPROPRIATIONS, 1970

The Senate continued with the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

Mr. BYRD of West Virginia. I ask unanimous consent to include in the RECORD certain documentary material with respect to section 904 of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Extract from Senate Report No. 91-616 to accompany the supplemental appropriation bill, 1970]

SECTION 904—THE "PHILADELPHIA PLAN"

The following new language has been included as section 904 of the bill:

"SEC. 904. In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute."

The provision recommended by the committee is to reaffirm the authority of the Comptroller General delegated to him by the Congress when it enacted the Budgeting and Accounting Act of 1921, as amended. Section 304 of this act, 31 U.S.C. 74 provides that "Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government." Section 111 of the act, 31 U.S.C. 65 directs the Comptroller General to determine whether "financial transactions have been consummated in accordance with laws, regulations, or other legal requirements." The Comptroller General has exercised the delegated congressional power over the obligation and expenditure of appropriated funds for almost 50 years without serious challenge from the Attorney General of the United States or any other officer of the executive branch. It has

been historic that where serious disagreements have arisen with the holdings of the Comptroller General, the proper recourse has been to the Congress or to the Federal courts. The committee holds that this is still true.

The Comptroller General, by letter dated December 2, 1969 informed the committee that a most serious challenge had been posed to his basic authority to determine the legality of obligations and expenditures by the executive branch.

The committee wishes to emphasize that the basic issue here is the constitutional authority of the Congress itself. It must be further emphasized that the Congress has delegated certain of its constitutional authority to the Comptroller General alone. As long as such delegation exists, it must be complete, and not be allowed to be eroded by the executive branch. Therefore the committee strongly recommends the adoption of section 904.

MEMORANDUM

To: Senator Robert C. Byrd, Chairman, Subcommittee on Deficiencies and Supplementals, Committee on Appropriations.
From: Joseph T. McDonnell, Staff Member.
Subject: Challenge to the authority of the Comptroller General, to determine the legality of the expenditure of appropriated funds (re the "Philadelphia Plan").

The question presented is *not* whether the Philadelphia Plan violates or does not violate the Civil Rights Act of 1964. The real question at issue is whether an opinion of the Comptroller General relative to the legality of the expenditure of appropriated funds is or is not "... final and conclusive upon the Executive Branch of the Government." (31 U.S.C. Sections 65(d) and 74.)

While it is true that the basic issue arises from the desire of the Executive Department to encourage, and possibly compel, the hiring of more members of minority groups by Government contractors, and at the same time encourage, and possibly compel, the craft unions to admit to membership more members of minority groups, these objectives are secondary to the basic question presented: Whether the Congress—acting through its agent, the Comptroller General—has or does not have the final authority to determine the legality of obligating or expending appropriated funds.

The question presented must necessarily be answered in the affirmative. To say otherwise is to deny the constitutional authority of Congress over appropriated funds and thus limit the congressional function to simply approving or disapproving budget estimates submitted by the Executive Branch.

That the constitutional authority of the Congress is far broader is amply illustrated by its unchallenged actions when approving appropriations, to impose limitations and conditions on the expenditure of said funds.

The complete authority of Congress over appropriated funds is nowhere better illustrated than by the creation in 1921 and continued existence of the office of Comptroller General, who exercises as the agent of Congress the delegated congressional authority to determine the legality of expenditures of appropriated funds.

Congress has decreed that such determinations will be "... final and conclusive upon the Executive Branch of the Government."

By delegating its own constitutional authority to an agent, Congress in no way limits its authority. Thus, to advance the proposition that an advisory opinion of the Attorney General can over-rule an opinion of the Comptroller General is to say that the Executive Branch is the final judge of the legality of the expenditure of appropriated funds. Such a proposition is not supportable.

by reference to the Constitution, nor by the precedents.

While the President cannot be compelled to spend appropriated funds, this presidential power cannot be turned around to mean that the President, once Congress appropriates funds, can direct that such funds can be spent to carry out any program or to achieve any objective that the President alone determines and do so without further authorization from the Congress.

In the instant case, the Comptroller General has held that the expenditure of funds for the purposes of carrying out the so-called "Philadelphia Plan" or any similar plan is not authorized by law. The Attorney General in an advisory opinion has held contra.

Again it must be emphasized that the basic question at issue is the delegated authority of the Comptroller General to determine the legality of the expenditures of appropriated funds—which determination Congress has decreed by statute shall be "final and conclusive upon the Executive Branch."

It is submitted that the question presented must be resolved in favor of the Comptroller General. If the Executive Branch wishes to pursue the "Philadelphia Plan" or institute "plans" having the same objective, then the President should request enactment by Congress of the necessary legislative authorization. Pending such request—unless the Congress desires to completely abdicate its constitutional authority over the expenditure of appropriated funds, and substitute the Attorney General for the Comptroller General—Congress should enact the language contained in Section 1004 proposed as an amendment to H.R. 15209, making supplemental appropriations for fiscal 1970.

II

The discussion above is intended to emphasize that the basic argument in favor of including the proposed amendment in H.R. 15209 is not the merits or demerits of the "Philadelphia Plan," but rather the need for the Congress itself to re-assert its own broad authority to determine the legality of the expenditure of appropriated funds. Of course, in so doing the delegated authority of the Comptroller General is also re-asserted.

III

The following attachments are submitted for your consideration:

1. *Attachment A:* The amendment to the Mutual Security Appropriation Act for fiscal 1960, mentioned by Mr. Thomas J. Scott, and some comments thereon by GAO.

2. *Attachment B:* Statutory citations re the authority of the Attorney General to issue opinions and some comments by the GAO on their force and effect.

3. *Attachment C:* Some examples of restrictions imposed by Congress on the expenditure of appropriated funds.

4. *Attachment D:* Summary prepared by GAO on your question as to how the "Philadelphia Plan" violates the Civil Rights Act of 1964. Attached to this summary is an extract from the Comptroller General's Opinion, B-163026, August 5, 1969, in which he concludes that the "Philadelphia Plan" is in conflict with the Civil Rights Act of 1964.

5. *Attachment E:* Memorandum from GAO re contracts awarded under the "Philadelphia Plan."

FOREIGN ASSISTANCE APPROPRIATIONS

Section 111(d) of the Mutual Security Appropriation Act, 1960, 73 Stat. 720, provided that:

"(d) None of the funds herein appropriated shall be used to carry out any provision of chapter II, III, or IV of the Mutual Security Act of 1954, as amended, in any country, or with respect to any project or activity, after the expiration of the thirty-five day period which begins on the date the General Accounting Office or any committee of the

Congress, or any duly authorized subcommittee thereof, charged with considering legislation or appropriations for, or expenditures of, the International Cooperation Administration, has delivered to the office of the Director of the International Cooperation Administration a written request that it be furnished any document, paper, communication, audit, review, finding, recommendation, report, or other material relating to the administration of such provision by the International Cooperation Administration in such country or with respect to such project or activity, unless and until there has been furnished to the General Accounting Office, or to such committee or subcommittee, as the case may be, (1) the document, paper, communication, audit, review, finding, recommendation, report, or other material so requested, or (2) a certification by the President that he has forbidden its being furnished pursuant to such request, and his reason for so doing."

See also, to similar effect, section 2394 of title 22, United States Code, and section 402 of the Foreign Assistance and Related Agencies Appropriation Act, 1969, 82 Stat. 1144, concerning the Office of the Inspector General and Comptroller.

The legislative history of section 111(d) of the 1960 appropriation act shows clearly that the Congress, in providing for a Presidential certification to avoid operation of the statutory injunction, did not intend to yield its prerogatives over the expenditure of appropriated funds. Senator Robertson in explaining the language of his amendment which was substantially enacted as section 111(d) made the following statements:

"In addition, and I wish to emphasize this, the amendment does not yield one iota of the constitutional right of the Congress to demand information concerning the handling of funds it has appropriated, but it makes this much of a concession to the difference of opinion between Congress and the President.

"* * * That difference is this: If the President, in keeping with the well established principle under the Constitution of the right of the President to handle foreign policy, decides that the disclosure of some phase of foreign policy would be against the public interest, he can so certify, and the Congress will not be able to get the information. But Mr. President, it is inconceivable that any President would invoke that privilege to cover up inefficiency of some minor official in some country in the expenditure of the taxpayers' money.

"I say we are not trying to settle the constitutional issue. At some future time we may have to do it, but we are not trying to do it in this bill. We are trying to arrive at a working formula which will enable Congress to have proper information about a program which costs almost \$4 billion a year of the taxpayers' money." 105 Con. Rec. 19256.

While recognition of the constitutional doctrine of executive privilege was thus accorded in connection with the appropriation restriction in question as it related to the withholding of information, it should be recognized that a restriction against use of appropriated funds to implement the "Philadelphia Plan" would not encounter this issue.

By decision of December 8, 1960, B-143777, the Comptroller General advised the Secretary of State that in light of the provisions of section 533A(d) of the Mutual Security Act of 1954 as added by section 401(h) of the Mutual Security Act of 1959, 73 Stat. 253, the failure to provide certain documents requested by the Chairman of the Foreign Operations and Monetary Affairs Subcommittee of the House Government Operations Committee required the conclusion that funds were not available for expenses of the office of the Inspector General and Comptroller. The Attorney General in an opinion dated December 19, 1960, advised the President that he did not agree with the Comptroller General's ruling. The matter was ultimately resolved through arrangements

worked out with the Subcommittee in connection with the documents in question.

Although the decision in 1960 concerned interpretation of a statute similar to those referred to, it should be noted that the provisions there in question were not contained in an appropriation act.

ATTORNEY GENERAL OPINIONS

5 U.S.C. 3106

"Except as otherwise authorized by law, the head of an executive department or military department may not employ an attorney or counsel for the conduct of litigation in which the United States, an agency, or employee thereof is a party, or is interested, or for the securing of evidence therefor, but shall refer the matter to the Department of Justice * * *."

28 U.S.C. 511

"The Attorney General shall give his advice and opinion on questions of law when required by the President."

28 U.S.C. 512

"The head of an executive department may require the opinion of the Attorney General on questions of law arising in the administration of his department." (See 28 U.S.C. 513 regarding military departments.)

28 U.S.C. 516

"Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or office thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under direction of the Attorney General."

The Attorney General has himself stated that his opinions are advisory only and that he has no control over the action of the head of department at whose request and to whom an opinion is given. 17 Op. Atty. Gen. 332 (1855). The duty of the Attorney General is to advise, not to decide. A thing is not to be considered as done by the head of a department merely because the Attorney General has advised him to do it; and the Department head may disregard the opinion if he is sure it is wrong. 9 Op. Atty. Gen. 36 (1857).

The courts have held that opinions of the Attorney General construing statutes are not, apparently, given greater weight by courts than is conceded to departmental constructions in general. *Lewis Pub. Co. v. Morgan*, 229 U.S. 288 (1913); *U.S. v. Falk*, 204 U.S. 143 (1907); *Harrison v. Vose*, 50 U.S. 384 (1850). Opinions as to a law held and expressed by Attorney General are persuasive, and such deference should be accorded to them as is given to opinions of other able persons learned in the law but no more. *McDonald v. U.S.*, 89 F. 2d 128 (1937), certiorari denied 301 U.S. 697, rehearing denied 302 U.S. 773, rehearing denied 325 U.S. 892.

On the other hand, the Attorney General has held that the head of a department cannot require the Attorney General's opinion as to his powers to do an act unless it is his intention to be guided thereby. 3 Op. Atty. Gen. 39 (1836); 21 Op. Atty. Gen. 174 (1895); 20 Op. Atty. Gen. 724 (1894); 20 Op. Atty. Gen. 609 (1893). Although there is no statutory declaration of the effect to be given to Attorney General advice and opinion, administrative officers should regard the opinions of the Attorney General as law until withdrawn by him or overruled by the courts. 5 Op. Atty. Gen. 97 (1849); 20 Op. Atty. Gen. 719 (1894); 20 Op. Atty. Gen. 648 (1893); 7 Op. Atty. Gen. 692 (1856). See also *Berger v. U.S.* 36 Ct. Cl. 247 (1901).

EXAMPLES OF APPROPRIATION RESTRICTIONS DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1969

"SEC. 509. No appropriation contained in this Act shall be available for expenses of operation of messes (other than organized

messes the operating expenses of which are financed principally from nonappropriated funds) at which meals are sold to officers or civilians except under regulations approved by the Secretary of Defense * * *.

"Sec. 514. Notwithstanding any other provision of law, Executive order, or regulation, no part of the appropriations in this Act shall be available for any expenses of operating aircraft under the jurisdiction of the Armed Forces for the purpose of proficiency flying except * * *.

"Sec. 515. No part of any appropriation contained in this Act shall be available for expense of transportation, packing, crating, temporary storage, drayage, and unpacking of household goods and personal effects in any one shipment having a net weight in excess of thirteen thousand five hundred pounds.

"Sec. 517. None of the funds provided in this Act shall be available for training in any legal profession nor for the payment of tuition for training in such profession: *Provided*, That this limitation shall not apply to the off-duty training of military personnel as prescribed by section 521 of this Act.

"Sec. 521. No appropriation contained in this Act shall be available for the payment of more than 75 per centum of charges of educational institutions for tuition or expenses for off-duty training of military personnel, nor for the payment of any part of tuition or expenses for such training for commissioned personnel who do not agree to remain on active duty for two years after completion of such training.

"Sec. 522. No part of the funds appropriated herein shall be expended for the support of any formally enrolled student in basic courses of the senior division, Reserve Officers' Training Corps, who has not executed a certificate of loyalty or loyalty oath in such form as shall be prescribed by the Secretary of Defense."

INDEPENDENT OFFICES AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATION ACT, 1969

"Sec. 301. No part of any appropriation contained in this Act, or of the funds available for expenditure by any corporation or agency included in this Act, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress.

"Sec. 307. None of the funds in this Act shall be available to finance interdepartmental boards, commissions, councils, committees, or similar groups under sec. 214 of the Independent Offices Appropriation Act, 1946 (31 U.S.C. 691) which do not have prior and specific Congressional approval of such method of financial support, except * * *.

DEPARTMENTS OF LABOR, AND HEALTH, EDUCATION, AND WELFARE APPROPRIATION ACT, 1969

"Sec. 409. No part of the funds contained in this Act may be used to force busing of students, abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents or parent in order to overcome racial imbalance.

"Sec. 410. No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school: *Provided*, That the Secretary shall assign as many persons to the investigation and compliance activities of title VI of the Civil Rights Act of 1964 related to elementary and secondary education in the other States as are assigned to the seventeen Southern and border States to assure that this law is administered and enforced on a national basis, and the Secretary is directed to enforce compliance with

title VI of the Civil Rights Act of 1964 by like methods and with equal emphasis in all States of the Union and to report to the Congress by March 1, 1969, on the actions he has taken and the results achieved in establishing this compliance program on a national basis: *Provided further*, That notwithstanding any other provision of law, funds or commodities for school lunch programs or medical services may not be recommended for withholding by any official employed under appropriations contained herein in order to overcome racial imbalance: *Provided further*, That notwithstanding any other provisions of law, moneys received from national forests to be expended for the benefit of the public schools or public roads of the county or counties in which the national forest is situated, may not be recommended for withholding by any official employed under appropriations contained herein."

DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1968, PUBLIC LAW 90-97, 81 STAT. 249

"Sec. 640.

"(b) During the current fiscal year none of the funds available to the Department of Defense may be used to install or utilize any new 'cost-based' or 'expense-based' system or systems for accounting, including accounting results for the purposes prescribed by section 113(a)(4) of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 66a(a)(4)), until forty-five days after the Comptroller General of the United States (after consultation with the Director of the Bureau of the Budget) has reported to the Congress that in his opinion such system or systems are designed to: (1) meet the requirements of all applicable laws governing budgeting, accounting, and the administration of public funds and the standards and procedures established pursuant thereto; (2) provide for uniform application to the extent practicable throughout the Department of Defense; and (3) prevent violations of the antideficiency statute (R.S. 3679; 31 U.S.C. 665)."

FOREIGN ASSISTANCE AND RELATED AGENCIES APPROPRIATION ACT, 1962, PUBLIC LAW 87-329, 75 STAT. 721

"Sec. 602. None of the funds herein appropriated shall be used for expenses of the Inspector General, Foreign Assistance, after the expiration of the thirty-five day period which begins on the date the General Accounting Office or any committee of the Congress, or any duly authorized subcommittee thereof, charged with considering foreign assistance legislation, appropriations, or expenditures, has delivered to the office of the Inspector General, Foreign Assistance, a written request that it be furnished any document, paper, communication, audit, review, finding, recommendation, report, or other material in the custody or control of the Inspector General, Foreign Assistance, relating to any review, inspection, or audit arranged for, directed, or conducted by him, unless and until there has been furnished to the General Accounting Office or to such committee or subcommittee, as the case may be, (A) the document, paper, communication, audit, review, finding, recommendation, report, or other material so requested or (B) a certification by the President, personally, that he has forbidden the furnishing thereof pursuant to such request and his reason for so doing."

INDEPENDENT OFFICES APPROPRIATION ACT, 1952, PUBLIC LAW 82-137, 65 STAT. 286

"No money made available to the Department of Commerce, for maritime activities, by this or any other Act shall be used in payment for a vessel the title to which is acquired by the Government either by requisition or purchase, or the use of which is taken either by requisition or agreement, or which is insured by the Government and lost while so insured, unless the price or hire to be paid therefor (except in cases where sec-

tion 802 of the Merchant Marine Act, 1936, as amended, is applicable) is computed in accordance with subsection 902(a) of said Act, as that subsection is interpreted by the General Accounting Office." (Emphasis supplied.)

All except the last of the foregoing provisions generally are held to be mere restrictions upon the use of appropriations and are not subject to a point of order. Such restrictions applying to "appropriations in this or any other act" as in the last-quoted provision are subject to a point of order as being legislation in an appropriation act. The Philadelphia Plan restriction would have to be of the latter type unless it is inserted in each of the pertinent appropriation acts.

SUMMARY OF WHY THE "PHILADELPHIA PLAN" CONFLICTS WITH THE CIVIL RIGHTS ACT OF 1964

The public policy with respect to both employer employment practices and union referral practices is set out in subsections 703 (a) and (c) of the Civil Rights Act of 1964. These provisions of the law clearly spell out that it shall be an unlawful employment practice for an employer to consider race or national origin in hiring or refusing to hire a qualified applicant, and for a labor organization, such as a union, to consider race or national origin in referring, or refusing to refer, a qualified applicant to an employer for employment.

If there were any doubt as to the policy set out in sections 703 (a) and (c), it would be completely dispelled by the provisions of subsection 703(j) which specify that the provisions of Title VII of the act shall not be interpreted to require any employer or labor organization to grant preferential treatment to any individual or group on account of an imbalance which may exist in the employer's work force or the labor organization's membership when the racial or national origin composition of such work force or membership is compared to the total number of persons of such race or national origin in the community or section, or in the available work force in the community or section.

The legislative history of the act is replete with clear indications of the Congressional intent in these areas, and the Comptroller General's opinion of August 5, 1969, quotes more than three pages of such references as examples of such intent.

To the extent that the Philadelphia Plan will require contractors to agree to establish numerical goals of minority group employees, and to exert "every good faith effort" to attain such goals in performing their contracts, the Plan will necessarily require contractors to consider race and national origin in recruiting and hiring employees. And to the extent that the numerical goals and ranges of minority group employees set out in the Plan are directed to correcting imbalances in either, or both, the contractors work force or his union's membership, they must necessarily be considered in violation of the public policy expressed in section 703(j) of the act.

Both the Department of Labor and the Department of Justice appear to recognize that the Plan either will, or may, result in reverse discrimination against non-minority group workers. But they argue that such reverse discrimination is legal if it is necessary to correct that present results of past discrimination. The truth of the matter is that the Departments are relying upon court opinions in school, voting, and housing cases to support their conclusion, and that there are no controlling judicial precedents on the point with respect to employment practices. Not only is the Executive branch of the Government attempting to legislate in this area, it is also attempting to interpret and apply inapplicable and conflicting opinions of the courts in a manner contrary to the intent of Congress in enacting the Civil Rights Act of 1964, and in a manner clearly not intended by the judiciary. The action of the Depart-

ments in implementing the Plan must therefore be construed as a usurpation by the Executive of the functions of both the Legislative and Judicial branches of the Government. If any additional support for this conclusion should be needed, one need only look to the provisions of subsection 706(g) of the act, which authorize the courts to order such "affirmative action" as may be appropriate when an employer or a union, pursuant to the judicial procedures prescribed by the act, has been found by the court to be engaging in unlawful employment practices.

Section 705(a) (42 U.S.C. 2000e-4(a)) creates the Equal Employment Opportunity Commission, and section 713(a), Rules and Regulations (42 U.S.C. 2000e-12(a)), provides that the Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of that title.

The public policy regarding labor organization practices is delineated in section 703(c) (42 U.S.C. 2000e-2(c)) wherein it is stated that it shall be an unlawful employment practice for a labor organization (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin; (2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or (3) to cause or attempt to cause an employer to discriminate against an individual in violation of that section.

Whether the provisions of the Plan requiring a bidder to commit himself to hire—or make every good faith effort to hire—at least the minimum number of minority group employees specified in the ranges established for the designated trades is, in fact, a "quota" system (and therefore admittedly contrary to the Civil Rights Act) or is a "goal" system, is in our view largely a matter of semantics, and tends to divert attention from the end result of the Plan—that contractors commit themselves to making race or national origin a factor for consideration in obtaining their employees.

We view the imposition of such a requirement on employers engaged in Federal or federally assisted construction to be in conflict with the intent as well as the letter of the above provisions of the act which make it an unlawful employment practice to use race or national origin as a basis for employment. Further, we believe that requiring an employer to abandon his customary practice of hiring through a local union because of a racial or national origin imbalance in the local unions and, under the threat of sanctions, to make "every good faith effort" to employ the number of minority group tradesmen specified in his bid from sources outside the union if the workers referred by the union do not include a sufficient number of minority group personnel, are in conflict with section 703(j) of the act (42 U.S.C. 2000e-2(j)) which provides as follows:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred of classified for employment by any employment agency or labor organi-

zation, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number of percentage of persons of such race, color, religion, sex, or national origin in any community, State, section or other area, or in the available work force in any community, State, section, or other area, or in the available work force in any area." (Italic added.)

While the legislative history of the Civil Rights Act is replete with statements by sponsors of the legislation that Title VII prohibits the use of race or national origin as a basis for hiring, we believe a reference to a few of such clarifying explanations will suffice to further show the specific intent of Congress in such respect when enacting that title. At page 6549, Volume 110, Part 5, of the Congressional Record, the following explanation by Senator Humphrey is set out:

"* * * As a longstanding friend of the American worker, I would not support this fair and reasonable equal employment opportunity provision if it would have any harmful effect on unions. The truth is that this title forbids discriminating against anyone on account of race. This is the simple and complete truth about title VII.

"The able Senators in charge of title VII (Mr. Clark and Mr. Case) will comment at greater length on this matter.

"Contrary to the allegations of some opponents of this title, there is nothing in it that will give any power to the Commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or to achieve a certain racial balance.

"That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion." (Italic added.)

In an interpretative memorandum of Title VII submitted jointly by Senator Clark and Senator Case, floor managers of that legislation in the Senate, it is stated (page 7213, Volume 110, Part 6, Congressional Record):

"With the exception noted above, therefore, section 704 prohibits discrimination in employment because of race, color, religion, sex, or national origin. It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any five of the forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.

"There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.

"There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in back-

ground and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance.

"Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier. (However, where waiting lists for employment or training are, prior to the effective date of the title, maintained on a discriminatory basis, the use of such lists after the title takes effect may be held an unlawful subterfuge to accomplish discrimination.)" (Underlining added.)

At page 7218 of Volume 110 the following objections, which had been raised during debate to the provisions of Title VII, and answers thereto by Senator Clark are printed:

"Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.

"Answer: Nothing in the bill will interfere with merit, hiring, or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.

"Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.

"Answer: Quotas are themselves discriminatory."

While, as indicated above, we believe that the provisions of the Plan affecting employers who hire through unions conflict with section 703(j) of Title VII, and that the above statement by Senator Humphrey further indicates that the act was not intended to affect valid collective bargaining agreements, we further believe that the appropriate direction of any administrative action to be taken where it is the policy of a union to refer only white workers to employers on Federal or federally assisted construction is indicated in the following question and answer set forth in the interpretative memorandum by Senator Clark and Senator Case (page 7217, Volume 110):

"Question: If an employer obtains his employees from a union hiring hall through operation of his labor contract is he in fact the true employer from the standpoint of discrimination because of race, color, religion, or national origin when he exercises no choice in their selection? If the hiring hall sends only white males is the employer guilty of discrimination within the meaning of this title? If he is not, then further safeguards must be provided to protect him from endless prosecution under the authority of this title.

"Answer: An employer who obtains his employees from a union hiring hall through operation of a labor contract is still an employer. If the hiring hall discriminates against Negroes, and sends him only whites, he is not guilty of discrimination—but union hiring halls would be."

We believe it is especially pertinent to note that the "Findings" stated in section 4 of the order of June 27 as the basis for issuance thereof, consist almost entirely of a recital of practices of unions, rather than of contractors or employers. Thus, in attempting to place upon the contractors the burden of overcoming the effects of union practices, the order appears to evince a policy in con-

dict with the interpretation of the legislation as stated by its sponsors.

In this connection your Solicitor's memorandum contends that the principle of imposing affirmative action programs on contractors for employment of administratively determined numbers of minority group tradesmen, when such programs are for the purpose of correcting the effects of discrimination by unions prior to the Civil Rights Act of 1964, is supported by the decisions in *Quarles v. Philip Morris*, 279 F. Supp. 505; *U.S. v. Local 189, U.P.P. and Crown Zellerbach Corp.*, 282 F. Supp. 39; and *Local 53 of Heat and Frost Insulators v. Vogler*, 407 F.2d 1047. We find, however, that decisions of the courts have differed materially in such respect; see *Griggs v. Duke Power*, 292 F. Supp. 243; *Dobbins v. Local 212*, 292 F. Supp. 413; and *U.S. v. Porter*, 296 F. Supp. 40.

Additionally, your Solicitor's memorandum cites cases involving affirmative desegregation of school faculties (*U.S. v. Jefferson County*, 372 F.2d 836 (1966), and *U.S. v. Montgomery County*, 289 F. Supp. 647, affirmed 37 LW 4461 (1969) in particular). However, there is a clear distinction between the factual and legal situations involved in those cases and the matter at hand. The cited school decisions required reallocation of portions of existing school faculties in implementation of the requirement for desegregation of dual public school systems, which had been established on the basis of race, as such requirement was set out in the 1954 and 1955 decisions of the Supreme Court in the *Brown v. Board of Education* cases (347 U.S. 483 and 349 U.S. 294). In the *Brown* cases desegregation of faculties was regarded as one of the keys to desegregation of the schools, and in the *Jefferson County* case the court read Title VI of the Civil Rights Act as a congressional mandate for a change in pace and method of enforcing the desegregation of racially segregated school systems, as required by the *Brown* decisions.

MEMORANDUM FROM GAO RE CONTRACTS AWARDED UNDER "PHILADELPHIA PLAN"

Information on file in the General Accounting Office indicates that four contracts containing the revised Philadelphia Plan have already been awarded. One of these contracts was awarded to Bristol Steel and Iron Works, Inc., in the amount of \$3,986,200, as low bidder for furnishing and erecting structural steel at Children's Hospital in Philadelphia.

The remaining three contracts were for general construction work, mechanical work, and electrical work in connection with an addition to the Law School at Villanova University. The contract for general construction work was awarded to Palladino-Fleming Company as low bidder at \$988,100. However, the low bids submitted by Kirk Plumbing and Heating Corporation on the mechanical work and by Robinson Electrical Company, Inc., on the electrical work, in amounts of \$252,000 and \$154,960, respectively, were rejected for failure to offer to comply with the Plan. Contracts for both types of work were thereafter awarded to the second lowest bidder, The Gerngross Corporation, at its bid prices of \$168,791 for electrical work and \$253,800 for mechanical work, or \$15,631 more than the low bids.

Both the Children's Hospital and Villanova University projects are subject to grants of Federal funds by the Department of Health, Education, and Welfare.

QUESTIONS PREPARED BY SENATOR ROBERT C. BYRD AND SUBMITTED TO THE COMPTROLLER GENERAL AND THE ANSWERS THERETO:

Question. Why should we give the Comptroller General all of this power?

Answer. This provision gives the Comptroller General no additional power whatsoever. It is merely a confirmation of the

authority given the Comptroller General by the Budget and Accounting Act of 1921. 31 U.S.C. 74 provides, and I quote:

"Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government."

This very question—that is, the finality of the Comptroller General's decision—came up during the debate preceding the 1921 Act. Let me read two of the statements made by Chairman James W. Good during those 1919 hearings:

"If he (the Comptroller) is allowed to have his decisions modified or changed by the will of an Executive—Mr. Good said—then we might as well abolish the office."

Mr. Good also observed:

"There ought to be an independent body, independent of the Executives, with an official who could say, 'This appropriation can or cannot be used for this purpose.'"

Congress took care of this point by enacting the provision of the Budget and Accounting Act I just quoted.

Question. Does this provision give the Comptroller General any additional authority over expenditures which he does not already have today?

Answer. No, it does not. This provision only applies to those activities where the Comptroller General has the authority to settle the accounts of the accountable officers and to make binding decisions. It does not include Government activities which have been excluded from the Comptroller General's authority. Examples of the latter are: jurisdiction over Internal Revenue assessments and refunds, veterans' compensation payments, and the expenditures of Government corporations.

Question. Just what did the Attorney General say which conflicts with the authority of the Comptroller General?

Answer. The Attorney General, in an opinion to the Secretary of Labor, not only upheld the action of the Secretary of Labor but went on to say, and I quote:

"I hardly need to add that the conclusions expressed herein may be relied on by your Department and other contracting agencies and their accountable officers in the administration of Executive Order No. 11246."

This, in effect, tells the agencies to ignore the opinion of the Comptroller General. Now, where will this lead? If this position is allowed to stand, it will be used in other cases, and Congress might as well forget about trying to exercise its Constitutional authority.

Question. Why not let the Comptroller General take a matter to court when there is a difference between his office and the Executive Branch of the Government?

Answer. Congress has only authorized the Department of Justice, and a few other agencies, to handle litigation involving the United States. The Comptroller General has not been granted this authority.

As a result, in any case involving one of his decisions which goes to court, the Comptroller General must be represented by the Attorney General. Obviously, where there is a difference between the Attorney General and the Comptroller General, certainly the views of the Comptroller General would not be advocated by the Attorney General.

Question. What is the legal authority for the "Philadelphia Plan"?

Answer. The "Philadelphia Plan" was issued under the authority of Executive Order No. 11246, which requires affirmative action programs to be taken to assist minority groups. The Executive Order does not spell out the details of the "Philadelphia Plan". That was done by the Secretary of Labor. The Comptroller General has not questioned the authority of the President to issue the Executive Order. He has questioned the im-

plementation of the Executive Order by the Department of Labor through the "Philadelphia Plan".

Question. Isn't what is at issue here is the power of the President to issue Executive Orders relative to the hiring of members of minority groups?

Answer. The power of the President to issue Executive Orders is not at issue. The issue here is the legality of the implementation of an Executive Order and not the Presidential power to issue the Executive Order. In fact, the Comptroller General has recognized the power of the President to issue the order. However, he is of the opinion that the "Plan" issued under the order violates the Civil Rights Act of 1964.

Question. When the Civil Rights Act of 1964 was being considered, was it intended to cover situations such as the "Philadelphia Plan"?

Answer. Section 703(j) of the Civil Rights Act of 1964 provides:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number of percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area." (Emphasis added.)

While the legislative history of the Civil Rights Act is replete with statements by sponsors of the legislation that Title VII prohibits the use of race or national origin as a basis for hiring, we believe a reference to a few of such clarifying explanations will suffice to further show the specific intent of Congress in such respect when enacting that title. At page 6549, Volume 110, Part 5, of the Congressional Record, the following explanation by Senator Humphrey is set out:

"* * * As a longstanding friend of the American worker, I would not support this fair and reasonable equal employment opportunity provision if it would have any harmful effect on unions. The truth is that this title forbids discriminating against anyone on account of race. This is the simple and complete truth about title VII."

"The able Senators in charge of title VII (Mr. Clark and Mr. Case) will comment at greater length on this matter."

"Contrary to the allegations of some opponents of this title, there is nothing in it that will give any power to the Commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or to achieve a certain racial balance."

"That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion." (Emphasis added.)

In an interpretative memorandum of Title VII submitted jointly by Senator Clark and Senator Case, floor managers of that legislation in the Senate, it is stated (page 7213, Volume 110, Part 6, Congressional Record):

"With the exception noted above, therefore, section 704 prohibits discrimination in employment because of race, color, religion, sex, or national origin. It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any five of the forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.

"There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, *whatever such a balance may be*, would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.

"There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance.

"Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier. (However, where waiting lists for employment or training are, prior to the effective date of the title, maintained on a discriminatory basis, the use of such lists after the title takes effect may be held an unlawful subterfuge to accomplish discrimination.)" (Italic added.)

At page 7218 of Volume 110 the following objections, which had been raised during debate to the provisions of Title VII, and answers thereto by Senator Clark are printed:

"Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.

"Answer: Nothing in the bill will interfere with merit, hiring, or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.

"Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.

"Answer: Quotas are themselves discriminatory."

While, as indicated above, we believe that the provisions of the Plan affecting employers who hire through unions conflict with section 703(j) of Title VII, and that the above statement by Senator Humphrey further indicates that the act was not intended to affect valid collective bargaining agree-

ments, we further believe that the appropriate direction of any administrative action to be taken where it is the policy of a union to refer only white workers to employers on Federal or federally assisted construction is indicated in the following question and answer set forth in the interpretative memorandum by Senator Clark and Senator Case (page 7217, Volume 110):

"Question. If an employer obtains his employees from a union hiring hall through operation of his labor contract is he in fact the true employer from the standpoint of discrimination because of race, color, religion, or national origin when he exercises no choice in their selection? If the hiring hall sends only white males is the employer guilty of discrimination within the meaning of this title? If he is not, then further safeguards must be provided to protect him from endless prosecution under the authority of this title.

"Answer. An employer who obtains his employees from a union hiring hall through operation of a labor contract is still an employer. If the hiring hall discriminates against Negroes, and sends him only whites, he is not guilty of discrimination—but the union hiring hall would be."

Question. What is the real distinction between the word, "quota", and the word, "goals", insofar as the "Philadelphia Plan" is concerned?

Answer. First, let me say that I think everyone agrees that "quotas" are illegal in that they are discriminatory. Now, when you require a contractor to agree to meet a "goal" of minority group workers and threaten a penalty, such as possible contract cancellation and debarment from future Government work unless he can show that he has made every good faith effort to meet his "goal", then the distinction between a "goal" and a "quota" is lost.

As the Comptroller General stated in his opinion of August 5, 1969, the question of whether the "Philadelphia Plan" is a "quota system" or a "goal system" is largely a matter of semantics. This argument tends to divert attention from the end result of the Plan—that contractors commit themselves to making race or national origin a factor for consideration in obtaining their employees.

Question. What is the legal authority for the Attorney General to issue a binding opinion in which the Attorney General states that the Department of Labor and other agencies may rely on his opinion in requiring contractors to meet the hiring provisions of the revised "Philadelphia Plan"?

Answer. The Attorney General is required to give advice to the heads of the Executive departments. However, there is no provision of law that they are binding but, of course, the Executive departments may feel that they should abide by the Attorney General's opinions. With reference to the advice furnished by the Attorney General that his conclusions could be relied on by the Labor Department and other contracting agencies in the administration of Executive Order No. 11246, such advice clearly conflicts with the Budget and Accounting Act of 1921, which gives the Comptroller General authority to decide on the legality of expenditures and makes his decisions final and conclusive upon the Executive Branch of the Government.

Question. The Comptroller General stated that the General Accounting Office was not opposed to equal employment opportunities for minority groups. Since the Civil Rights Act of 1964, Executive Order No. 11246, and the "Philadelphia Plan" all seek to achieve this goal, why is section 904 needed at this time?

Answer. The Comptroller General has made it quite clear that he is not against greater opportunities for minority groups. In fact, none of us here are. The real issue is whether the Executive Branch can take actions to achieve this objective which conflict with

laws enacted by the Congress. The Comptroller General, as well as many others, believe that the "Philadelphia Plan" does conflict with Title VII of the Civil Rights Act.

The need for section 904, in my opinion, is best illustrated by a paragraph contained in the Committee report on this provision, and I quote:

"The committee wishes to emphasize that the basic issue here is the constitutional authority of the Congress itself. It must be further emphasized that the Congress has delegated certain of its constitutional authority to the Comptroller General alone. As long as such delegation exists, it must be complete, and not be allowed to be eroded by the executive branch. Therefore the committee strongly recommends the adoption of section 904."

Question. Since the Civil Rights Act was designed to assist black people and the "Philadelphia Plan" is aimed at that objective, why is there objection to it?

Answer. The Comptroller General has made it quite clear that he is not against greater opportunities for minority groups. However, he believes that actions taken by the Executive Branch in achieving this objective must be in accord with the laws enacted by Congress. He is of the opinion, after careful research of the plan and of the Civil Rights Act of 1964, that the plan is in conflict with Title VII of the Act and is therefore unauthorized. It is not a question of helping the black people, but a question of helping them in a way which does not conflict with the laws passed by Congress and the Constitutional power of Congress itself.

Question. Why can't this matter be put off until early next Session? What would be the adverse effect of delay?

Answer. One of the cases presently involved is the question of the legality of the "Philadelphia Plan." The Comptroller General has found the plan to be in violation of the Civil Rights Act of 1964. The Attorney General thinks otherwise, and has advised the Department of Labor to go ahead with the plan. I understand that four contracts containing the "Philadelphia Plan" have already been awarded in the Philadelphia area. Also, I understand that the Department of Labor plans to extend the plan to other areas. Also, the Secretary of Transportation has adopted the "Philadelphia Plan" procedures in the awarding of highway construction contracts. Any delay in meeting this issue would allow expenditures to be made which the Comptroller General has found to be illegal. The longer Congress waits in acting on this matter, the deeper we become involved, and a precedent is being firmed up for the Executive Branch, acting on advice of the Attorney General, to in effect "call the shots" on Government expenditures, rather than the Comptroller General, the agent of Congress, exercising his clear authority under the Budget and Accounting Act of 1921.

LETTER TO SENATOR ROBERT C. BYRD FROM
COMPTROLLER GENERAL AND ATTACHMENTS
THERETO

DECEMBER 2, 1969.

Hon. ROBERT C. BYRD,
Chairman, Subcommittee on Deficiencies and
Supplementals, Committee on Appropriations,
U.S. Senate.

DEAR MR. CHAIRMAN: I want to bring a matter to your attention which I think is of utmost importance to the Congress and to the General Accounting Office. This involves the "Philadelphia Plan" promulgated by the Department of Labor to increase the number of minority group workers in certain construction trades.

The basic facts are (1) the Department of Labor issued an order requiring that major construction contracts in the Philadelphia area, which are entered into or financed by

the United States, include commitments by contractors to goals of employment of minority workers in specified skilled trades; (2) by a decision dated August 5, 1969, advised the Secretary of Labor that I considered the Plan to be in contravention of the Civil Rights Act of 1964 and would so hold in passing upon the legality of the expenditure of funds under contracts made subject to the Plan; and (3) the Attorney General on September 22, 1969, advised the Secretary of Labor that the Plan is not in conflict with the Civil Rights Act; that it is authorized under Executive Order No. 11246, and that it may be enforced in awarding Government contracts.

On the basis of the Attorney General's Opinion, the Department of Labor has proceeded with the Plan in the Philadelphia area, and it is planning to go ahead in several other metropolitan areas. Also, we understand that the Secretary of Transportation has adopted the "Philadelphia Plan" procedures in the awarding of highway construction contracts.

Senator Ervin, as Chairman of the Subcommittee on Separation of Powers of the Senate Judiciary Committee, held hearings on this controversy in October of this year, and I understand he is sending a letter to the Senate Appropriations Committee suggesting to the Committee that it consider an appropriation bill limitation to prevent the Plan from being carried out in the Philadelphia area and from being placed in effect in other areas.

I want to make it clear that the General Accounting Office is not against greater opportunities for minority groups. However, we believe that actions taken by the Executive Branch in achieving this objective, must be in accord with the laws enacted by the Congress. As stated in our opinion of August 5, 1969, we believe that the "Philadelphia Plan" is in conflict with Title VII of the Civil Rights Act of 1964 and is therefore unauthorized.

The Attorney General in his opinion of September 22, 1969, concluded with a statement that the contracting agencies and their accountable officers could rely on his opinion. Considering that the sole authority claimed for the Plan ordered by the Labor Department is the Executive order of the President, it is quite clear that the Executive Branch of the Government is asserting the power to use Government funds in the accomplishment of a program not authorized by Congressional enactment, upon its own determination of authority and its own interpretation of pertinent statutes, and contrary to an opinion by the Comptroller General to whom the Congress has given the authority to determine the legality of expenditures of appropriated funds, and whose actions with respect thereto were decreed by the Congress to be "final and conclusive upon the Executive Branch of the Government." We believe the actions of officials of the Executive Branch in this matter present such serious challenges to the authority vested in the General Accounting Office by the Congress as to present a substantial threat to the maintenance of effective legislative control of the expenditure of Government funds.

The opinion of the Attorney General and the announced intention of the Labor Department to extend the provisions of the Plan to other major metropolitan areas can only create such widespread doubt and confusion in the construction industry and in the labor groups involved (which may also be shared to a considerable extent by the Government's contracting and fiscal officers) as to constitute a major obstacle to the orderly prosecution of Federal and federally assisted construction. We further believe there is a definite possibility that, faced with a possibility of not being able to obtain prompt payment under contracts for such

work as well as the probability of labor difficulties resulting from their efforts to comply with the Plan, many potential contractors will be reluctant to bid. Of course, if this occurs the Plan will result in restricting full and free competition as required by the procurement laws and regulations. Also, those who do bid will no doubt consider it necessary to include in their bid prices substantial contingency allowances to guard against loss.

In view of the situation I have outlined, I urge that the Senate Appropriations Committee give serious consideration to including in the Supplemental Appropriation Bill, 1970, which is now pending before the Committee, a limitation on the use of funds to finance any contract requiring a contractor or subcontractor to meet, or to make every effort to meet, specified goals of minority group employees. Language to accomplish this request is enclosed for your consideration.

I am also enclosing a copy of my decision of August 5, 1969; a copy of the Attorney General's opinion of September 22, 1969; a copy of Senator Ervin's statement of October 27, 1969; a copy of my statement of October 28, 1969, before the Subcommittee on Separation of Powers of the Senate Judiciary Committee; a copy of an article by James E. Remmert, which appeared in the November 1969, issue of the American Bar Association Journal, entitled "Executive Order 11246: Executive Encroachment," and copies of recent letters to me from Senator Ervin, Senator Russell, Senator McClellan, Senator Randolph, Senator Jordan, and Congressman Cramer. In connection with the latter expression of views, I would point out that there are other members of the Senate and of the House who support the Plan.

We are available to discuss this problem with you or the Appropriations Committee at any time.

Sincerely,

ELMER B. STAATS,

Comptroller General of the United States.

OPINION OF COMPTROLLER GENERAL RE
PHILADELPHIA PLAN

AUGUST 5, 1969.

DEAR MR. SECRETARY: We refer to an order issued June 27, 1969, to the heads of all agencies by the Assistant Secretary for Wage and Labor Standards, Department of Labor. The order announced a revised Philadelphia Plan (effective July 18, 1969) to implement the provisions of Executive Order 11246 and the rules and regulations issued pursuant thereto which require a program of equal employment opportunity by contractors and subcontractors on both Federal and federally assisted construction projects.

Questions have been submitted to our Office by members of Congress, both as to be propriety of the revised Philadelphia Plan and the legal validity of Executive Order 11246 and of various implementing regulations issued thereunder both by your Department and by other agencies. In view of possible conflicts between the requirements of the Plan and the provisions of Titles VI and VII of the Civil Rights Act of 1964, Pub. L. 88-352, discussions have been held between representatives of our Office, your Department, and the Department of Justice, and your Solicitor has furnished to us a legal memorandum in support of the authority for issuance of the Executive Order as well as the revised Philadelphia Plan promulgated thereunder.

The memorandum presents the following points in support of the legal propriety of the Plan:

I. The Executive has the authority and the duty to require employers who do business with the Government to provide equal employment opportunity.

II. The passage of the Civil Rights Act of

1964 did not deprive the President of the authority to regulate, pursuant to Executive Orders, the employment practices of Government contractors.

III. The revised Philadelphia Plan is lawful under the Federal Government's procurement policies, is authorized under Executive Order 11246 and the implementing regulations, and is lawful under Title VII of the Civil Rights Act of 1964.

Without conceding the validity of all of the arguments advanced under points I and II, we accept the authority of the President to issue Executive Order 11246, and the contention that the Congress in enacting the Civil Rights Act did not intend to deprive the President of all authority to regulate employment practices of Government contractors.

The essential questions presented to this Office by the revised Philadelphia Plan, however, are (1) whether the Plan is compatible with fundamentals of the competitive bidding process as it applies to the awarding of Federal and federally assisted construction contracts, and (2) whether impositions of the specific requirements set out therein can be regarded as a legally proper implementation of the public policy to prevent discrimination in employment, which is declared in the Civil Rights Act and is inherent in the Constitution, or whether those requirements so far transcend the policy of nondiscrimination, by making race or national origin a determinative factor in employment, as to conflict with the limitations expressly imposed by the act or with the basic constitutional concept of equality.

Our interest and authority in the matter exists by virtue of the duty imposed upon our Office by the Congress to audit all expenditures of appropriated funds, which necessarily involves the determination of the legality of such expenditures, including the legality of contracts obligating the Government to payment of such funds. Authority has been specifically conferred on this Office to render decisions to the heads of departments and agencies of the Government, prior to the incurring of any obligations, with respect to the legality of any action contemplated by them involving expenditures of appropriated funds, and this authority has been exercised continuously by our Office since its creation whenever any question as to the legality of a proposed action has been raised, whether by submission by an agency head, or by complaint of an interested party, or by information coming to our attention in the course of our other operations.

The incorporation into the terms of solicitations for Government contracts of conditions or requirements concerning wages and other employment conditions or practices has been a frequent subject of decisions by this Office, many of which will be found enumerated in our decision at 42 Comp. Gen. 1. The rule invariably applied in such cases has been that any contract conditions or stipulations which tend to restrict the full and free competition required by the procurement laws and regulations are unauthorized, unless they are reasonably requisite to the accomplishment of the legislative purposes of the appropriation involved or other law. Furthermore, where the Congress in enacting a statute covering the subject matter of such conditions has specifically prohibited certain actions, no administrative authority can lawfully impose any requirements the effect of which would be to contravene such prohibitions. It is within the framework of these principles that we consider the order promulgating the revised Philadelphia Plan.

The Assistant Secretary's order states the policy of the Office of Federal Contract Compliance (OFCC) that no contracts or subcontracts shall be awarded for Federal and federally assisted construction in the Phila-

delphia, Pennsylvania, area (including the counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia) on projects whose cost exceeds \$500,000 unless the bidder submits an acceptable affirmative action program which shall include specific goals of minority manpower utilization, meeting the standards included in the invitation or other solicitations for bids, in trades utilizing the seven classifications of employees specified therein.

The order further relates that enforcement of the nondiscrimination and affirmative action requirements of Executive Order 11246 has posed special problems in the construction trades; that contractors and subcontractors must hire a new employee complement for each construction job and out of necessity or convenience they rely on the construction craft unions as their prime or sole source of their labor; that collective bargaining agreements and/or established custom between construction contractors and subcontractors and unions frequently provide for, or result in, exclusive hiring halls; that even where the collective bargaining agreement contains no such hiring hall provisions or the custom is not rigid, as a practical matter, most people working the specified classifications are referred to the jobs by the unions; and that because of these hiring arrangements, referral by a union is a virtual necessity for obtaining employment in union construction projects, which constitute the bulk of commercial construction.

It is also stated that because of the exclusionary practices of labor organizations, there traditionally have been only a small number of Negroes employed in the seven trades, and that unions in these trades in the Philadelphia area still have only about 1.6 percent minority group membership and they continue to engage in practices, including the granting of referral priorities to union members and to persons who have work experience under union contracts, which result in few Negroes being referred for employment. The OFCC found, therefore, that special measures requiring bidders to commit themselves to specific goals of minority manpower utilization were needed to provide equal employment opportunity in the seven trades.

Section 7 of the Assistant Secretary's order of June 27 indicates that the revised Plan is to be implemented by including in the solicitation for bids a notice substantially similar to one labeled "Appendix" which is attached to the order. Such notice would state the ranges of minority manpower utilization (as determined by the OFCC Area Coordinator in cooperation with the Federal contracting or administering agencies in the Philadelphia area) which would constitute an acceptable affirmative action program, and would require the bidder to submit his specific goals in the following form:

Identification of trade

Est. total employment for the trade on the contract

Number of minority group employees

Participation in a multi-employer program approved by OFCC would be acceptable in lieu of a goal for the trade involved in such program.

The notice also provides that the contractor will obtain similar goals from his subcontractors who will perform work in the involved trades, and that "Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 6 of the Order * * *." Since Section 6 of the order contains nothing relative to "failure," we assume the intended reference is to Section 8, which reads as follows:

"Post-award compliance

"a Each agency shall review contractors' and subcontractors' employment practices during the performance of the contract. If

the goals set forth in the affirmative action program are being met, the contractor or subcontractor will be presumed to be in compliance with the requirements of Executive Order 11246, as amended, unless it comes to the agency's attention that such contractor or subcontractor is not providing equal employment opportunity. In the event of failure to meet the goals, the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment. In any proceeding in which such good faith performance is in issue, the contractor's entire compliance posture shall be reviewed and evaluated in the process of considering the imposition of sanctions. Where the agency finds that the contractor or subcontractor has failed to comply with the requirements of Executive Order 11246, the implementing regulations and its obligations under its affirmative action program, the agency shall take such action and impose such sanctions as may be appropriate under the Executive Order and the regulations. Such noncompliance by the contractor or subcontractor shall be taken into consideration by Federal agencies in determining whether such contractor or subcontractor can comply with the requirements of Executive Order 11246 and is therefore a 'responsible prospective contractor' within the meaning of the Federal procurement regulations.

"b. It is no excuse that the union with which the contractor has a collective bargaining agreement failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964. It is the longstanding uniform policy of OFCC that contractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in Federally-involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, or the implementing rules, regulations and orders."

It is our opinion that the submission of goals by the successful bidder would operate to make the requirement for "every good faith effort" to attain such goals a part of his contractual obligation upon award of a contract. The provisions of Section 8 of the order would therefore become a part of the contract specifications against which the contractor's performance would be judged in the event he fails to attain his stated goals, just as much as his stated goals become a part of the contract specifications against which his performance will be judged in the event he does attain his stated goals.

As indicated at page 4 of the order, the original Philadelphia Plan was suspended because it contravened the principles of competitive bidding. Such contravention resulted from the imposition of requirements on bidders, after bid opening, which were not specifically set out in the solicitation. The present statement of a specific numerical range into which a bidder's affirmative action goals must fall is apparently designed to meet, and reasonably satisfies, the requirement for specificity.

However, we have serious doubts covering the main objective of the Plan, which is to require bidders to commit themselves to make every good faith effort to employ specified numbers of minority group tradesmen in the performance of Federal and federally assisted contracts and subcontracts.

The pertinent public policy with respect to employment practices of an employer which may be regarded as constituting un-

lawful discrimination is set out in Titles VI and VII of the Civil Rights Act, Title VI, concerning federally assisted programs, provides in section 601 (42 U.S.C. 2000d) that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

Section 703(a) (42 U.S.C. 2000e-2(a)) of Title VII states the public policy concerning employer employment practices by declaring it to be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. Section 705(a) (42 U.S.C. 2000e-4(a)) creates the Equal Employment Opportunity Commission, and section 713(a), Rules and Regulations (42 U.S.C. 2000e-12(a)), provides that the Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of that title.

The public policy regarding labor organization practices is delineated in section 703(c) (42 U.S.C. 2000e-2(c)) wherein it is stated that it shall be an unlawful employment practice for a labor organization (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin; (2) to limit, segregate, or classify its membership or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or (3) to cause or attempt to cause an employer to discriminate against an individual in violation of that section.

Whether the provisions of the Plan requiring a bidder to commit himself to hire—or make every good faith effort to hire—at least the minimum number of minority group employees specified in the ranges established for the designated trades is, in fact, a "quota" system (and therefore admittedly contrary to the Civil Rights Act) or is a "goal" system, is in our view largely a matter of semantics, and tends to divert attention from the end result of the Plan—that contractors commit themselves to making race or national origin a factor for consideration in obtaining their employees.

We view the imposition of such a requirement on employers engaged in Federal or federally assisted construction to be in conflict with the intent as well as the letter of the above provisions of the act which make it an unlawful employment practice to use race or national origin as a basis for employment. Further, we believe that requiring an employer to abandon his customary practice of hiring through a local union because of a racial or national origin imbalance in the local unions and, under the threat of sanctions, to make "every good faith effort" to employ the number of minority group tradesmen specified in his bid from sources outside the union if the workers referred by the union do not include a sufficient number of minority group personnel, are in conflict with section 703(j) of the act (42 U.S.C. 2000e-2(j)) which provides as follows:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number of percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area." (Underscoring added.)

While the legislative history of the Civil Rights Act is replete with statements by sponsors of the legislation that Title VII prohibits the use of race or national origin as a basis for hiring, we believe a reference to a few of such clarifying explanations will suffice to further show the specific intent of Congress in such respect when enacting that title. At page 6549, Volume 110, Part 5, of the Congressional Record, the following explanation by Senator Humphrey is set out:

"* * * As a longstanding friend of the American worker, I would not support this fair and reasonable equal employment opportunity provision if it would have any harmful effect on unions. The truth is that this title forbids discriminating against anyone on account of race. This is the simple and complete truth about title VII.

"The able Senators in charge of title VII (Mr. Clark and Mr. Case) will comment at greater length on this matter.

"Contrary to the allegations of some opponents of this title, there is nothing in it that will give any power to the Commission or to any court to require hiring, firing or promotion of employees in order to meet a racial 'quota' or to achieve a certain racial balance.

"That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion." (Italics added.)

In an interpretative memorandum of Title VII submitted jointly by Senator Clark and Senator Case, floor managers of that legislation in the Senate, it is stated (page 7213, Volume 110, Part 6, Congressional Record):

"With the exception noted above, therefore, section 704 prohibits discrimination in employment because of race, color, religion, sex, or national origin. It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any five of the forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.

"There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the

basis of race. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.

"There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance.

"Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier. (However, where waiting lists for employment or training are, prior to the effective date of the title, maintained on a discriminatory basis, the use of such lists after the title takes effect may be held an unlawful subterfuge to accomplish discrimination.)" (Emphasis added.)

At page 7218 of Volume 110 the following objections, which had been raised during debate to the provisions of Title VII, and answers thereto by Senator Clark are printed:

"Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.

"Answer: Nothing in the bill will interfere with merit, hiring, or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.

"Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.

"Answer: Quotas are themselves discriminatory."

While, as indicated above, we believe that the provisions of the Plan affecting employers who hire through unions conflict with section 703(j) or Title VII, and that the above statement by Senator Humphrey further indicates that the act was not intended to affect valid collective bargaining agreements, we further believe that the appropriate direction of any administrative action to be taken where it is the policy of a union to refer only white workers to employers on Federal or federally assisted construction is indicated in the following question and answer set forth in the interpretative memorandum by Senator Clark Case (page 7217, Volume 110):

"Question. If an employer obtains his employees from a union hiring hall through operation of his labor contract is he in fact the true employer from the standpoint of discrimination because of race, color, religion, or national origin when he exercises no choice in their selection? If the hiring hall sends white males is the employer guilty of discrimination within the meaning of this title? If he is not, then further safeguards must be provided to protect him from endless prosecution under the authority of this title.

"Answer. An employer who obtains his employees from a union hiring hall through operation of a labor contract is still an employer. If the hiring hall discriminates

against Negroes, and sends him only whites, he is not guilty of discrimination—but the union hiring hall would be."

We believe it is especially pertinent to note that the "Findings" stated in section 4 of the order of June 27 as the basis for issuance thereof, consist almost entirely of a recital of practices of unions, rather than of contractors or employers. Thus, in attempting to place upon the contractors the burden of overcoming the effects of union practices, the order appears to evince a policy in conflict with the interpretation of the legislation as stated by its sponsors.

In this connection your Solicitor's memorandum contends that the principle of imposing affirmative action programs on contractors for employment of administratively determined numbers of minority group tradesmen, when such programs are for the purpose of correcting the effects of discrimination by unions prior to the Civil Rights Act of 1964, is supported by the decisions in *Quarles v. Philip Morris*, 279 F. Supp. 505; *U.S. v. Local 189, U.P.P. and Crown Zellerbach Corp.*, 282 F. Supp. 39; and *Local 53 of Heat and Frost Insulators v. Vogler*, 407 F. 2d 1047. We find, however, that decisions of the courts have differed materially in such respect; see *Griggs v. Duke Power*, 292 F. Supp. 243; *Dobbins v. Local 212*, 292 F. Supp. 413; and *U.S. v. Porter*, 296 F. Supp. 40.

Additionally, your Solicitor's memorandum cites cases involving affirmative desegregation of school faculties (*U.S. v. Jefferson County*, 372 F. 2d 836 (1966), and *U.S. v. Montgomery County*, 289 F. Supp. 647, affirmed 37 LW 4461 (1969) in particular). However, there is a clear distinction between the factual and legal situations involved in those cases and the matter at hand. The cited school decisions required reallocation of portions of existing school faculties in implementation of the requirement for desegregation of dual public school systems, which had been established on the basis of race, as such requirement was set out in the 1954 and 1955 decisions of the Supreme Court in the *Brown v. Board of Education* cases (347 U.S. 483 and 349 U.S. 294). In the *Brown* cases desegregation of faculties was regarded as one of the keys to desegregation of the schools, and in the *Jefferson County* case the court read Title VI of the Civil Rights Act as a congressional mandate for a change in pace and method of enforcing the desegregation of racially segregated school systems, as required by the *Brown* decisions.

The requirements of the revised Philadelphia Plan do not involve a comparable situation. Even if the present composition of an employer's work force or the membership of a union is the result of past discrimination, there is no requirement imposed by the Constitution, by a mandate of the Supreme Court, or by the Civil Rights Act for an employer or a union to affirmatively desegregate its personnel or membership. The distinction becomes more apparent when it is recognized that the order of June 27 pertains to hiring practices of an employer. Hiring was not at issue in the school cases, and those cases do not purport to hold that a school district must, or even may, correct a racial imbalance in its faculty by affirmatively requiring that a stated proportion of its teachers shall be hired on the basis of race. To the contrary, the court recognized in its decision in the *Jefferson County* case (page 884) that the "mandate of *Brown* * * * forbids the discriminatory consideration of race in faculty selection," and such consideration is expressly prohibited by section VIII of the court's decree in Appendix A of that case.

The recital in section 6b.2 of the order (and in the prescribed form of notice to be included in the invitation) that the contractor's commitment "is not intended and shall not be used to discriminate against any qualified applicant or employee" is in

our opinion the statement of a practical impossibility. If, for example, a contractor requires 20 plumbers and is committed to a goal of employment of at least five from minority groups, every nonminority applicant for employment in excess of 15 would, solely by reason of his race or national origin, be prejudiced in his opportunity for employment, because the contractor is committed to make every effort to employ five applicants from minority groups.

In your Solicitor's memorandum it is argued that the "straw man" sometimes used in opposition to the Plan is that it "would require a contractor to discriminate against a better qualified white craftsman in favor of a less qualified black." We believe this obscures the point involved, since it introduces the element of skill or competence, whereas the essential question is whether the Plan would require the contractor to select a black craftsman over an *equally* qualified white one. We see no room for doubt that the contractor in the situation posed above would believe he would be expected to employ the black applicant, at least until he had reached his goal of five nonminority group employees, and that if he failed to achieve that goal his employment of a white craftsman when an equally qualified black one was available could be considered a failure to use "every good faith effort." In our view such preferential status or treatment would constitute discrimination against the white worker solely on the basis of color, and therefore would be contrary to the express prohibition both of the Civil Rights Act and of the Executive order.

It is also contended in your Solicitor's memorandum that substantial judicial support for administrative affirmative action programs requiring commitments for contractors for employment of specified numbers of minority group tradesmen is contained in the decision of the Ohio Supreme Court in *Weiner v. Cuyahoga Community College District*, 19 Ohio St. 2d — (July 2, 1969). That decision upheld the award of a federally assisted construction contract to the second low bidder, as a proper action in implementation of the policies of the Civil Rights Act of 1964, after approval of award to the low bidder was withheld by the Federal agency involved for failure of the low bidder to submit an affirmative action program (including manning tables for minority group tradesmen) which was acceptable to that agency pursuant to an OFCC plan established for Cleveland, Ohio.

While the decision in *Weiner* case (which was a majority opinion by five of the justices with dissenting opinions by two) has some bearing on the issues here involved, since the decision appears to be based in substantial part on the conflicting opinions of Federal courts cited earlier we do not believe the decision can be considered as controlling precedent for the validity of the revised Philadelphia Plan.

In support of the required procedure, which is admitted at page 33 of the Solicitor's memorandum to require contractors to take actions which are based on race, the memorandum relies upon the acceptance by the courts, in school, housing and voting cases, of the use of race as a valid consideration in fashioning relief to overcome the effects of past discrimination. Aside from other distinctions, we believe there is a material difference between the situation in those cases, where enforcement of the rights of the minority individuals to vote or to have unsegregated educational or housing facilities does not deprive any member of a majority group of his rights, and the situation in the employment field, where the hiring of a minority worker, as one of a group whose number is limited by the employer's needs, in preference to one of the majority group precludes the employment of the latter. In other words, in those cases there is present no

element of reverse discrimination, but only the correction of the illegal denial of minority rights, leaving the majority in the full exercise and enjoyment of their corresponding rights.

In addition it may be pointed out that in those cases the judicial relief ordered is directed squarely at the parties responsible for the denial of rights, and we therefore do not consider them as supporting requirements to be complied with by contractors who, under the findings of the Plan, are themselves more the victims than the instigators of the past discriminatory practices of the labor unions. Moreover, in the court cases the remedies are applied after judicial determination that effective discrimination is in fact being practiced or fostered by the defendants, whereas the Plan is a blanket administrative mandate for remedial action to be taken by all contractors in an attempt to cure the evils resulting from union actions, without specific reference to any past or existing actions or practices by the contractors.

While it may be true, as stated in the Plan, "that special measures are required to provide equal employment opportunity in these seven trades," it is our opinion that imposition of a responsibility upon Government contractors to incur additional expenses in affirmative action programs which are directed to overcoming the present effects of past discrimination by labor unions, would require the expenditure of appropriated funds in a manner not contemplated by the Congress. If, as stated in the Plan, discrimination in referral is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, it is our opinion that the remedies provided by the Congress in those acts should be followed. See also in this connection section 207 of Executive Order 11246.

While, as indicated in the foregoing opinions and in your Solicitor's memorandum, the President is sworn to "preserve, protect and defend the Constitution of the United States," we question whether the executive departments are required, in the absence of a definitive and controlling opinion by the Supreme Court of the United States, to assess the relative merits of conflicting opinions of the lower courts, and embark upon a course of affirmative action, based upon the results of such assessment, which appears to be in conflict with the expressed intent of the Congress in duly enacted legislation on the same subject.

In this connection, it should be noted that, while the phrase "affirmative action" was included in the Executive order (10925) which was in effect at the time Congress was debating the bills which were subsequently enacted as the Civil Rights Act of 1964, no specific affirmative action requirements of the kind here involved had been imposed upon contractors under authority of that Executive order at that time, and we therefore do not think it can be successfully contended that Congress, in recognizing the existence of the Executive order and in failing to specifically legislate against it, was approving or ratifying the type or methods of affirmative action which your Department now proposes to impose upon contractors.

We recognize that both your Department and the Department of Justice have found the Plan to be legal and we have given most serious consideration to their positions. However, until the authority for any agency to impose or require conditions in invitations for bids on Federal or federally assisted construction which obligate bidders, contractors, or subcontractors, to consider the race or national origin of their employees or prospective employees for such construction, is clearly and firmly established by the weight of judicial precedent, or by additional statutes, we must conclude that conditions of the type proposed by the revised Philadelphia Plan are in conflict with the Civil Rights

Act of 1964, and we will necessarily have to so construe and apply the act in passing upon the legality of matters involving expenditures of appropriated funds for Federal or federally assisted construction projects.

In this connection it is observed that by section 705(d) of the act, Congress charges the Equal Employment Opportunity Commission with the specific responsibility of making reports to the Congress and to the President on the cause of and means of eliminating discrimination and making such recommendations for further legislation as may appear desirable. That provision, we believe, not only prescribes the procedure for correcting any deficiencies in the Civil Rights Act, but also shows the intent of Congress to reserve for its own judgment the establishment of any additional unlawful employment practice categories or nondiscrimination requirement, or the imposition upon employers of any additional requirements for assuring equal employment opportunities.

We realize that our conclusions as set out above may disrupt the programs and objectives of your Department, and may cause concern among members of minority groups who may believe that racial balance or equal representation on Federal and federally assisted construction projects is required under the 1964 act, the Executive order, or the Constitution. Desirable as these objectives may be, we cannot agree to their attainment by the imposition of requirements on contractors, in their performance of Federal or federally-assisted contracts, which the Congress has specifically indicated would be improper or prohibited in carrying out the objectives and purposes of the 1964 act.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

[Opinion of Attorney General re Philadelphia plan]

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 22, 1969.

THE HONORABLE, THE SECRETARY OF LABOR:

MY DEAR MR. SECRETARY: You have requested my opinion as to the legality of the Department of Labor's order of June 27, 1969, the Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

The Philadelphia Plan has been issued to implement Executive Order 11246 of September 24, 1965, as amended (30 F.R. 12319, 32 F.R. 14303, 34 F.R. 12986), in which the President has directed that Federal Government contracts and federally-assisted construction contracts contain specified language obligating the contractor and his subcontractors not to discriminate in employment because of race, color, religion, sex, or national origin.¹ The Secretary of Labor is responsible

¹ The essential part of the contractor's obligation under this order is:

"The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. * * * E.O. 11246, § 202(1).

In addition the contractor agrees to furnish required information and reports, to comply with orders and regulations implementing the Executive order, and to include these contractual provisions in subcontracts.

for the administration of Executive Order 11246 and is authorized to "adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof." E.O. 11246, § 201.

Among the undertakings required of contractors by Executive Order 11246 is to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin." E.O. 11246, § 202(1). The obligation to take "affirmative action" imports something more than the merely negative obligation not to discriminate contained in the preceding sentence of the standard contract clause. It is given added definition by the Secretary's regulations, which require that contractors develop written affirmative action plans which shall "provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and time tables for the prompt achievement of full and equal employment opportunity." 41 C.F.R. 60-1.40.

The Department of Labor order of June 27th is based upon stated findings relating to the enforcement of the nondiscrimination and affirmative action requirements of Executive Order 11246 with respect to the construction trades in the Philadelphia area. The Department of Labor has found that contractors must ordinarily hire a new employee complement for each construction job and that whether by contract, custom, or convenience this hiring usually takes place on the basis of referral by the construction craft unions. The Department of Labor has found further that exclusionary practices on the part of certain of these unions, including a refusal to admit Negroes to membership in unions or in apprenticeship programs, and a preference in work referrals to union members and to those who have worked under union contracts, have resulted in the employment of only a small number of Negroes in the six construction trades in the area affected by the Philadelphia Plan. Accordingly, the Department of Labor has found that special measures were required in the Philadelphia area to provide equal employment opportunity in these six specified construction trades.²

The Revised Philadelphia Plan requires that with respect to construction contracts in the Philadelphia area which are subject to Executive Order 11246 and where the estimated total cost of the construction project exceeds \$500,000, each bidder must, in the affirmative action program submitted with his bid, "set specific goals of minority manpower utilization which meet the definite standard" included in the invitation for bids. This standard will be a range of minority manpower utilization for the trades covered by the Plan and will be determined prior to the invitation for bids by the Department's area coordinator on the basis of the extent of minority group participation in the trade, the availability of minority group persons for employment in such trade, and other stated factors. As an alternative to setting such specific goals, the bidder may agree to participate in a multi-employer affirmative action program which has been approved by the Department of Labor's Office of Federal Contract Compliance.

The Plan provides that the contractor's commitment to specific goals "is not intended and shall not be used to discriminate

against any qualified applicant or employee," (§ 6(b)(2)). Furthermore, the obligation to meet the goals is not absolute. "In the event of failure to meet the goals, the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment. In any proceeding in which such good faith performance is in issue, the contractor's entire compliance posture shall be reviewed and evaluated in the process of considering the imposition of sanctions," (§ 8(a)).

In response to Congressional inquiries the Comptroller General has, in his letter to you of August 5, 1969, expressed the opinion that the provision of the Philadelphia Plan for commitment to specific goals for minority group participation is in conflict with Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, and consequently unlawful, and he has indicated further that such illegality may affect the lawfulness of expenditures of appropriated funds under contracts entered into under the terms and procedures of the Philadelphia Plan. *Cf.* 42 Comp. Gen. 1 (1962).

I have reached a contrary result, and conclude that the Revised Philadelphia Plan is not in conflict with any provision of the Civil Rights Act, that it is a lawful implementation of the provisions of Executive Order 11246, and that it may be enforced in accordance with its terms in the award of Government contracts.

Before undertaking detailed analysis of the contentions involved, it is important to consider the functions of the Executive order and the Philadelphia Plan, as well as the provisions of the Plan itself. Executive Order 11246 is a lawful exercise of the Federal Government's authority to determine the terms and conditions on which it is willing to enter into contracts.³ That order lays down a rule which governs only those employers who enter into contracts with the United States, construction contracts financed with Federal assistance, or subcontracts arising under such Federal or federally-assisted contracts. Neither the order nor the Philadelphia Plan, which implements the order with respect to certain construction contracts, regulates the practices of employers generally. While the power of the Government to determine the terms which shall be included in its contracts is subject to limitations imposed by the Constitution or by acts of Congress, the existence of such power does not depend on an affirmative legislative enactment. In evaluating the Comptroller General's challenge to the Philadelphia Plan on the basis of conflict with Title VII of the Civil Rights Act, it is important to distinguish between those things prohibited by Title VII as to all employers covered by that act, and those things which are merely not required of employers by that act. The United States as a contracting party may not require an employer to engage in practices which Congress has prohibited. It does not follow, however, that the United States may not require of those who contract with it certain employment practices which Congress has not seen fit to require of employers generally.

³ The order is generally similar to its predecessor, Executive Order 10925 of March 6, 1961, which, in 42 Ops. A.G. No. 21 (1961), was held to be a valid exercise of presidential authority. See also 40 Comp. Gen. 592 (1961); *Farkas v. Texas Instrument, Inc.*, 375 F. 2d 629, 632 (C.A. 5, 1967). The contract compliance program under these Executive orders has received legislative recognition in the Civil Rights Act of 1964, § 709(d), 42 U.S.C. 2000e-8(d), and in subsequent appropriations legislation. The Comptroller General does not challenge the validity of Executive Order 11246, as such, but concludes that the Revised Philadelphia Plan is not a permissible implementation of the order because of an asserted conflict with Title VII of the Civil Rights Act.

The requirements which the Plan would impose on contractors may be briefly summarized.⁴ The contractor must

(a) in his proposal set specific goals for minority group hiring within certain skilled trades, which goals must be within the range previously determined to be appropriate by the Secretary;

(b) he must make "every good faith effort" to meet these goals;

(c) but he may not, in so doing, discriminate against any qualified applicant or employee on grounds of race, color, religion, sex or national origin.

If a plan such as this conflicts with Title VII of the Civil Rights Act, its validity concededly cannot be sustained. But in my view no such conflict exists. Section 703(a) of the Civil Rights Act makes it an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

"(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

Nothing in the Philadelphia Plan requires an employer to violate section 703(a). The employer's obligation is to make every good faith effort to meet his goals. A good faith effort does not include any action which would violate section 703(a) or any other provision of Title VII. If the provisions of the Plan were ambiguous on this point, its interpretation would be governed by the principle that "where two constructions of a written contract are possible preference will be given to that which does not result in violation of law," *Great Northern Ry. Co. v. Delmar Co.*, 283 U.S. 686, 691 (1931). However, to remove any doubt the Plan specifies that the contractor's commitment shall not be used to discriminate against any qualified applicant or employee.

Nevertheless, it might be argued—and the Comptroller General appears to take this position—that the obligation to make good faith efforts to achieve particular goals is meaningless if it does not contemplate deliberate efforts on the part of the contractor to affect the racial composition of his work force, that this necessarily involves a commitment "to making race or national origin a factor for consideration in obtaining [his] employees," and that any such action would violate Title VII.

It is not correct to say that Title VII prohibits employers from making race or national origin a factor for consideration at any stage in the process of obtaining employees. The legal definition of discrimination is an evolving one, but it is now well recognized in judicial opinions that the obligation of non-discrimination, whether imposed by statute or by the Constitution, does not require and, in some circumstances, may not permit obliviousness or indifference to the racial consequences of alternative courses of action which involve the application of outwardly neutral criteria. *Gaston County v. United States*, 395 U.S. 285 (1969) (voting); *Offermann v. Nitkowski*, 378 F. 2d 22 (C.A. 2, 1967) (schools); *Local 189, United Paper-makers, etc. v. United States*, F. 2d —, 60 L.C. ¶9289 (C.A. 5, 1969) (employment).

There is no inherent inconsistency between a requirement that each qualified employee and applicant be individually treated

⁴ I put to one side the bidder's option of participating in an OFCC-approved multi-employer program, since the details of such programs have yet to be worked out and the legality of such programs has not been called into question.

² The order of June 27, issued by the Assistant Secretary for Wage and Labor Standards, is reprinted at 115 Cong. Rec. S 8837-39. All of the findings summarized above appear in section 4 of the order, 115 Cong. Rec. S 8838. The order originally extended to seven construction trades, but one trade has been removed from coverage.

without regard to race, and a requirement that an employer make every good faith effort to achieve a certain range of minority employment. The hiring process, viewed realistically, does not begin and end with the employer's choice among competing applicants. The standards he sets for consideration of applicants, the methods he uses to evaluate qualifications, his techniques for communicating information as to vacancies, the audience to which he communicates such information, are all factors likely to have a real and a predictable effect on the racial composition of his work force. Title VII does not prohibit some structuring of the hiring process, such as the broadening of the recruitment base, to encourage the employment of members of minority groups. *Local 189, etc. v. United States, supra* at ; see *Offermann v. Nitkowski, supra* at 24. The obligation of "affirmative action" imposed pursuant to Executive Order 11246 may require it. 41 C.F.R. 5-12.805-51(b), (c); Matter of Allen-Bradley Co., CCH Empl. Prac. Svce. ¶ 8065 (1968).

Viewed in this light, the example cited in the Comptroller General's opinion is not an argument against the legality of the Plan. The Comptroller General poses the example of a contractor requiring twenty plumbers, with a specified "goal" that five of these plumbers be from minority groups. If the contractor has filled fifteen of these posts with nonminority plumbers, says the Comptroller General, the next white applicant for one of the five vacancies will inevitably be discriminated against by reason of the fact that he is not a member of a minority group. Doubtless a part of the good faith effort required of the contractor to achieve the stated goals would have been to avail himself of manpower sources which might be expected to produce a representative number of minority applicants, so that the situation posed in the Comptroller General's example would arise but infrequently. Yet, quite clearly, if notwithstanding the good faith efforts of the employer such a situation does arise, the qualified nonminority employee may be hired. The fact that the minority employment goal was to this extent not reached would not in itself be sufficient ground for concluding that the contractor had not exerted good faith efforts to reach it.

The Philadelphia Plan addresses itself to a situation in which, according to the Department of Labor's findings, the contractors have in the past delegated an important part of the hiring function to labor organizations by selecting their work force on the basis of union referrals. The referral practices of certain unions, whether or not amounting to violations of Title VII, have in fact contributed to the virtual exclusion of Negroes from employment in certain trades in the Philadelphia area. Continued reliance by contractors on established hiring practices may reasonably be expected to result in continued exclusion of Negroes. The purpose of the Philadelphia Plan is to place squarely upon the contractor the burden of broadening his recruitment base whether within or without the existing union referral system, as he shall determine. The contractor's obligation is phrased primarily in terms of goals; the choice of methods is his, provided only that he does not discriminate against qualified employees or applicants. Unless it can be demonstrated that the hiring goals cannot be achieved without unlawful discrimination,⁶ I fail to see why the

Government is not permitted to require a pledge of good faith efforts to meet them as a condition for the award of contracts.

The Comptroller General argues that inasmuch as Title VII does not require labor organizations to achieve a racial balance in their memberships or in referrals (§ 703(j)), Executive Order 11246 cannot be used to require an employer "to abandon his customary practice of hiring through a local union" even though experience has demonstrated that the union refers very few members of minority groups. I confess I find this argument difficult to follow. Since, as stated above, the obligation of affirmative action comprehends more than bare compliance with Title VII and may under proper circumstances include an obligation on the part of the employer to broaden his recruitment base, the order would be an exercise in futility if the employer may evade this obligation by contracting away his power to perform it. Whether or not the law permits him to accept referrals only from unions which are or may be discriminating,⁶ the law does not require him to do so. To comply with his affirmative action obligation an employer may be forced to depart from his customary reliance on union referrals (though this will depend to a great extent on the unions' own response to the Plan), but since the law permits an employer to obtain employees from additional sources, I see no reason why the Government is not free to bargain for his assurance to do so. In other words, the employer may have a right to refuse to abandon his customary hiring practices, but he has no right to contract with the Government on his own terms. *Perkins v. Lukens Steel Co.*, 310 U.S. 113 (1940); *Copper Plumbing & Heating Co. v. Campbell*, 290 F. 2d 368, 370-71 (C.A. D.C. 1961). Accordingly, I conclude that the Philadelphia Plan is not inconsistent with any provision of Title VII of the Civil Rights Act.

Another argument might be urged against the legality of the Philadelphia Plan. Let it be conceded, this argument runs, that the Government may lawfully require a contractor to take certain forms of affirmative action to increase employment of members of minority groups, and conceded further that on its face the Philadelphia Plan requires no more than legally permissible forms of affirmative action to achieve the goals set by the contractor in response to the bidding invitation. Nevertheless, by stating the contractor's primary obligation in terms of a numerical result, by failing to specify what "good faith efforts" will be acceptable in lieu of the achievement of such result, and by placing upon the contractor who has failed to achieve his "goal" the burden of proving that, in effect, he did all that was legally permissible to meet it, the Government so weights the procedural scales against the nonachieving contractor as to coerce him in fact, if not in law, into discriminating. In other words, although the substance of the contractor's obligation under the Philadelphia Plan may be permissible, the Plan does not provide a fair method for resolving questions regarding compliance. *Cf. Speiser v. Randall*, 357 U.S. 513, 520-26 (1958).

This argument appears to me to be premature and speculative at this time. It is true that the Philadelphia Plan might be clearer if it were to state what good faith efforts are expected of contractors. But the

general requirements of affirmative action, particularly in the area of recruitment, have been stated elsewhere in regulations, 41 C.F.R. 5-12.805-51(b), (c), and other publications, and there is no reason to believe that the Department of Labor officials administering the Plan would be unwilling to describe to any interested contractor the kind of actions expected of him. In short, I cannot assume that any contractor who desires to participate in good faith in the Philadelphia Plan will be forced, as a practical matter, to choose between noncompliance with his affirmative action obligation and violation of Title VII. If unfairness in the administration of the Plan should develop, it cannot be doubted that judicial remedies are available. *Cf. Copper Plumbing & Heating Co. v. Campbell, supra*.

Finally, the Comptroller General appears to suggest that although Title VII contemplated the continued operation of the contract compliance program under Executive orders, nevertheless the substantive provisions of Title VII somehow limit and preempt those of the order. The basis for this conclusion is nowhere explained. There is no question that the Executive order cannot require what Title VII forbids, but as has been pointed out above, the Philadelphia Plan does not seek to do so. The Comptroller General argues further, in effect, that the Executive order can neither require nor forbid actions or practices which Title VII declines to interfere with. This is the inference which must be drawn from the Comptroller General's references to expression in the legislative history of the Civil Rights Act regarding what Title VII would not do.⁷ But Title VII is not and was not understood by Congress to be the exclusive remedy for racially discriminatory practices in employment, *Local Union No. 12 v. NLRB*, 368 F. 2d 12, 24 (C.A. 5, 1966), *cert. denied*, 389 U.S. 837 (1967), *rehearing denied*, 389 U.S. 1060 (1968). Nothing in the language or legislative history of that statute suggests that "affirmative action" may not be required of Government contractors under the Executive order above and beyond what the statute requires of employers generally.⁸

It is, therefore, my view that the Revised Philadelphia Plan is legal and that your Department is authorized to require Federal contracting and administering agencies to implement the Plan in accordance with its terms in the award of contracts in the Philadelphia area. E. O. 11246, § 201, 205. Where a contractor submits a bid which does not comply with the invitation for bids issued pursuant to the Plan, such a bid may be rejected as not responsive. 38 Ops. A. G. 555 (1937); *Graybar Electric Co. v. United States*, 90 C. Cls. 232, 244 (1940). I hardly need add that the conclusions expressed herein may be relied on by your Department and other contracting agencies and their accountable officers in the administration of Executive Order 11246. 28 U.S.C. 512, 516; 37 Ops. A. G. 562, 563 (1934); 38 Ops. A. G. 176, 178-81 (1935); *Smith v. Jackson*, 241 Fed. 747, 773 (C.A. 5, 1917), *aff'd*, 246 U.S. 388 (1918).

Sincerely,

JOHN N. MITCHELL,
Attorney General.

⁷ On the view I take of the question before me, it is not necessary to consider the correctness of all the Comptroller General's conclusions regarding the scope of Title VII, and my failure to do so implies neither agreement nor disagreement with such conclusions.

⁸ In the one instance where the statute deals with the overlap of Title VII and the Executive order, reporting requirements, it is the order and not the statute which is accorded priority. § 709(d).

⁶ The Plan provides that the goals will be determined with particular attention to the factual situation in each affected trade. Accordingly, there is every reason to assume that the goals will represent an informed administrative judgment of what an effective affirmative action plan may be expected to achieve.

⁶ On the facts before me it is impossible to determine whether the present practices of the unions affected by the Philadelphia Plan are in violation of Title VII and such a determination is not necessary to the resolution of the question of the legality of the Plan.

OPENING STATEMENT OF SENATOR SAM J. ERVIN, JR., CHAIRMAN, SUBCOMMITTEE ON SEPARATION OF POWERS OF THE COMMITTEE ON THE JUDICIARY, HEARINGS ON ADMINISTRATIVE AGENCIES: THE DEPARTMENT OF LABOR'S "PHILADELPHIA PLAN," OCTOBER 27, 1969

Today, the Subcommittee on Separation of Powers begins two days of hearings on the Department of Labor's revised Philadelphia Plan, a controversial effort to raise the percentage of minority group members working in six Philadelphia area construction trades.

Over the past three months, the Philadelphia Plan has become the focal point of pressures and discontent which reach far into American society. At this moment, the Labor Department and the Comptroller General of the United States are in complete disagreement about the Plan's legality. The Comptroller General, who believes the Plan conflicts with Title VII of the 1964 Civil Rights Act, has refused to allow any government funds to be spent under the Plan. The Labor Department, supported by the Attorney General, contends that the Plan is legal and intends to implement it in nine other cities, with or without the Comptroller General's approval.

During the next two days, our purpose will not be to debate the wisdom of the Philadelphia Plan, although its wisdom has been challenged in the Congress and in the streets of Chicago, Pittsburgh, and Seattle. We will not assess the social and political consequences which are inherent in any such policy. Rather, we will examine the Plan as it relates to the doctrine of separation of powers and to try to determine whether the Labor Department has usurped Congressional authority and violated legislative intent.

We will ask the Labor Department to explain, in clear English, precisely what it means by "affirmative action goal" and by "specific numerical range". That task may not be easy. The Brookings Institution, in a report called *Jobs and Civil Rights*, prepared for the U.S. Commission on Civil Rights some two years ago, aptly summarized the response of Labor Department officials when asked to define such terms:

"Compliance officials", the report found, "do everything they can to avoid directly facing questions involving preferences. The usual response when confronted with this issue is to fall back on the standard semantics that compliance is not so much a matter of set requirements as it is a matter of taking affirmative actions which produce results . . . The current approach may enable the government to go further than the Congress and public opinion would allow if its goals in this area had to be made more explicit."

Throughout the controversy over the Philadelphia Plan, one of the Labor Department's recurring arguments has been that the Plan has been misunderstood by its critics. If the Department is sincerely concerned about any misunderstandings, now is the time to clarify them. Now is the time for the Department to be more candid than in the past: to explain its policies in everyday English, not to cloak them in the misleading language which the Brookings report describes. For the Department to persist in using "the standard semantics" would be to leave its policies as unclear and confusing as ever.

I would like to point out that the Labor Department has been something less than cooperative in its dealings with the Subcommittee. On the several occasions in which the Subcommittee requested information from the Department, those requests were either ignored, answered incompletely, or answered after substantial delays. Ordinarily these would be small points, and I do not intend for them to become issues

in these hearings. But if the Labor Department has in fact been misunderstood, perhaps this lack of cooperation is partly responsible for that situation.

We will also ask the Labor Department to make clear what is meant by the "good faith effort" which is required of contractors under the Philadelphia Plan. Nowhere in the Plan is that term defined. Does that "good faith effort" compel contractors to discriminate against workers who are not members of any minority group, workers with seniority in their unions, workers with the immediate skills needed to complete a Federal construction project within the contract deadline? My observation is that it does, in view of the harsh pressures which the Office of Federal Contract Compliance can bring to bear on contractors subject to the Plan.

The Subcommittee wants to be shown that the Philadelphia Plan, in forcing contractors to raise the percentage of minority group employment, does not violate Title VII of the 1964 Civil Rights Act. That act certainly does not authorize any racial quota systems, by whatever names they may be called. At this point, I want to read into the record Section 703(j) of Title VII:

"(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area."

I will also read into the record a section of the interpretative memorandum prepared in 1964 by Senators Clark and Case, the floor managers of Title VII. In their statement, which begins on 110 Cong. Rec. 7213, they stated:

"There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race."

To me, the texts of Title VII and of the interpretative memorandum constitute clear evidence that the Philadelphia Plan contravenes the intent of the most avid proponents of the 1964 Civil Rights Act. They show that Executive Order 11246, which was designed merely to guarantee equal employment opportunity regardless of race, has been stretched beyond the limits of reason to lend legal justification to the Philadelphia Plan.

I ask the Labor Department to explain why the Philadelphia Plan does not compel contractors to hire on the basis of race. I ask the Department to show that the Plan does not ignore the intent expressed in the Clark-Case memorandum.

The Philadelphia Plan, according to the Labor Department itself, requires minority group employment of 22 to 26 per cent among ironworkers by 1973. It requires 20 to 24 per cent among plumbers, and among pipefitters, and among steamfitters. It requires 19 to 23 per cent among sheetmetal, electrical, and elevator construction workers. These per-

centages rise every year. It would be a travesty for the Department to claim that they are not based on race.

We want the Labor Department to explain, without resorting to semantic devices, why the Philadelphia Plan disregards the intent of Congress that Title VII should not hold contractors responsible for the membership practices of labor unions, practices over which the contractors can exercise absolutely no control.

I want to read another section of the Clark-Case memorandum into the record at this point:

Question: If an employer obtains his employees from a union hiring hall through operation of his labor contract is he in fact the true employer from the standpoint of discrimination because of race, color, religion, or national origin when he exercises no choice in their selection? If the hiring hall sends only white males is the employer guilty of discrimination within the meaning of this title? . . .

Answer: An employer who obtains his employees from a union hiring hall through operation of a labor contract is still an employer. If the hiring hall discriminates against Negroes, and sends him only whites, he is not guilty of discrimination—but the union hiring hall would be.

We would like the Labor Department to justify the Philadelphia Plan's apparent conflict with the intent of Congress that Title VII should not interfere with union seniority systems.

In debating Title VII in 1964, Senator Humphrey said that ". . . there is nothing in it that will give any power to the commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or balance."

I believe the Philadelphia Plan requires just such a racial balance or quota, whether that quota is disguised as a "target", a "goal", a "range", or a "standard". The Brookings Institution report found, in fact, that "the compliance specialist often applies a form of *subjective quota* in deciding how hard to push a given contractor." That report was completed more than two years ago, long before the revised Philadelphia Plan was adopted.

There is something very disquieting in all of this. In a statement made in January 1967, former OFCC Director Edward C. Sylvester admitted that "there is no firm and fixed definition of affirmative action. I would say that in a general way, affirmative action is anything you have to do to get results."

In making this statement, Mr. Sylvester no doubt had the high purpose of giving effect to his desire that all citizens be guaranteed equal employment opportunity according to ability. But his emphasis on results at the expense of procedure concerns me. We seem to have forgotten the admonition of Justice Frankfurter that "the history of American freedom is, in no small measure, the history of procedure." In seeking to raise artificially the percentage of minority group workers in Philadelphia through this misuse of an Executive Order, the Labor Department is establishing a nearsighted precedent. For if we are lax today in adhering to the law, what may happen tomorrow when that practice is adopted by those who would subvert procedure to their own evil purposes? The power to twist procedure is one no good administrator should want and no bad administrator should have. We cannot allow our legal principles to be frittered away by manipulation of the law.

There is another point which concerns me greatly, a point which has largely been ignored in the arguments surrounding the Philadelphia Plan. Section 202(1) of Executive Order 11246 requires Federal contractors to hire and treat their employees "without regard" to their race, color, religion, or national origin. It seems to me that those two

words, "without regard", mean exactly what they say. They are clear and unambiguous.

Since all the sections of a law must be construed together, it is in the context of those words, "without regard", that the more general concept of "affirmative action" must be placed. Yes, the Executive Order requires affirmative action, but only affirmative action which is taken "without regard" to race, color, religion, or national origin. It is here that the Philadelphia Plan is fatally defective. It compels contractors to make decisions based precisely on those four considerations. The Plan is in conflict not only with Title VII of the 1964 Civil Rights Act, it also is in conflict with the very Executive Order under which it was created.

Whatever the courts may have decided about considering race as a factor in remedying inequities, those precedents cannot apply to the Philadelphia Plan. The language of Executive Order 11246 places an ironclad ban on racial considerations in employment by Federal contractors. It is no more legal for the Labor Department to reverse the meaning of the words, "without regard", than it would be for the Department to mis-spend a Congressional appropriation.

I do not argue that the labor unions are violating the 1964 Civil Rights Act, and I want to make it very plain that this hearing is not designed to criticize labor organizations in any way. However, I must point out—and I am sure that the Labor and Justice Departments are aware—that the 1964 Civil Rights Act gives them ample tools to bring suits against labor organizations if they have sufficient evidence of discrimination and can prove it in open court. It therefore appears to me illogical and unfair that the Department of Labor prefers to attack the alleged problem of exclusion by penalizing the contractors, who play no role in the membership practices of labor organizations.

During the course of the Philadelphia Plan controversy, the Comptroller General has been accused of exceeding his authority in finding the Plan unacceptable because it violates Title VII. I want to comment on that criticism now. Under 31 U.S. Code 65, the Budget and Accounting Act of 1921, the Comptroller General is directed to determine whether "financial transactions have been consummated in accordance with laws, regulations, or other legal requirements". Without question, that statute provides the Comptroller General with the authority to check the Philadelphia Plan against any and all laws, not merely those which deal with procurement.

Finally, the Subcommittee has before it S. 931, a bill introduced by Senator Fannin, which would make Title VII the sole means of enforcement and remedy in the field of equal employment. It would suspend the use of Executive Order 11246. We welcome the comments of our witnesses on that bill.

[From the United States General Accounting Office Washington, D.C.]

STATEMENT OF ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES, BEFORE THE SUBCOMMITTEE ON SEPARATION OF POWERS, SENATE COMMITTEE ON THE JUDICIARY, ON THE PHILADELPHIA PLAN, OCTOBER 27, 1969

Mr. Chairman and Members of the Subcommittee: We appreciate this opportunity to appear before your Subcommittee to discuss our position with respect to the revised "Philadelphia Plan." We are concerned about both the legality of the Plan and the situations which appear to have arisen as a result of our endeavors to discharge our statutory duties and responsibilities in connection with the Plan.

I believe the members of the Subcommittee are by now aware of the basic facts, which are (1) that the Department of Labor has issued an order requiring that major construction contracts in the Philadelphia

area, which are entered into or financed by the United States, must include commitments by the contractors to goals of employment of minority workers in specified skilled trades; (2) that by a decision dated August 5, 1969, we advised the Secretary of Labor that we considered the Plan to be in contravention of the Civil Rights Act of 1964 and would be required to so hold in passing upon the legality of expenditures of appropriated funds under contracts made subject to the Plan; and (3) that the Attorney General on September 22, 1969, issued an opinion to the Secretary of Labor advising him of his conclusion that the Plan is not in conflict with any provision of the Civil Rights Act; that it is authorized by Executive Order No. 11246; and that it may be enforced in awarding Government contracts.

We would like to offer for the record copies of our decision and of the Attorney General's opinion.

The revised Philadelphia Plan was issued on June 27, 1969, with the announcement that it was designed to meet GAO's objections to a lack of specificity in a prior plan. The new plan is frank and direct in stating its purpose. It gives a rundown of the history of alleged discriminatory practices by the Philadelphia construction unions in admitting members; it states that the percentage of minority group membership in the unions and the construction trades is far below the ratio of minority group population to the total Philadelphia population, and it advises that the purpose of the Plan is to achieve greater participation of minority group members in the construction trades.

The Plan states that there shall be included in invitations for bids (IFBs) on both Federal and federally assisted construction contracts in the Philadelphia area, specific ranges of minority group employees in each of six skilled construction trades; that each bidder must designate in his bid the specific number of minority group employees, within such ranges, that he will employ on the job; and that failure of the contractor to "make every good faith effort" to attain the minority group employment "goals" he has established in his bid may result in the imposition of sanctions, which might include termination of his contract.

The primary question considered in our decision of August 5 was whether the revised Plan violated the equal employment opportunity provisions of the Civil Rights Act of 1964.

In the formulation of that decision, we regarded the Civil Rights Act of 1964 as being the law governing nondiscrimination in employment and equal employment opportunity obligations of employers. Therefore we considered the 1964 Act as overriding any administrative rules, regulations, and orders which conflicted with the provisions of that Act or went beyond such law and purported to establish, in effect, additional unlawful employment practices for employers who engaged in Federal or federally assisted construction.

We think the basic policy of the equal employment opportunity part of the Act is set out in pertinent part in section 703(a) as follows:

"It shall be an unlawful employment practice for any employer—

"(1) to fail or refuse to hire * * * any individual * * * because of such individual's race, color, religion, sex, or national origin."

The basic policy of the Act as it relates to federally assisted contracts, is stated in pertinent part in section 601, as follows:

"No person * * * shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Another pertinent provision of the Act is set out in section 703(j), which provides in part as follows:

"Nothing contained in this title shall be interpreted to require any employer * * * to grant preferential treatment to any individual or to any group because * * * of an imbalance which may exist with respect to the total number or percentage of persons of any race * * * or national origin employed by any employer [or] referred * * * for employment by any * * * labor organization * * * in comparison with the total number or percentage of persons of such race * * * or national origin in any community * * * or in the available work force in any community * * *."

This part of the law is known as the prohibition against "quotas"; that is, the prohibition against requiring an employer to hire a specified proportion or percentage of his employees from certain racial or national origin groups.

It seems to have been generally accepted by Labor, Justice and minority group spokesmen that "quotas" are illegal. But in defense of the Philadelphia Plan the Department of Labor argued that the "goals" for minority group employees which would be included in IFBs and in contracts under the Plan could not violate the Civil Rights Act of 1964 because—

1. A quota is a *fixed* number or percentage of minority group members, whereas *ranges* to be established under the Plan are flexible in that the bidder may choose as his goal any number or percentage within the ranges set out in the IFB.

2. Failure to attain the "goals" does not constitute noncompliance, since such failure can be waived if the contractor can show that he made "every good faith effort" to attain the goals.

3. The Philadelphia Plan was promulgated under Executive Order 11246, not under the Civil Rights Act of 1964, and affirmative action programs under the Executive Order may properly require consideration of race or national origin if such consideration is necessary to correct the present results of past discrimination.

4. The Plan provides that the contractor's commitment to specified goals of minority group employment shall not be used to discriminate against any qualified applicant or employee.

In considering these arguments in our decision of August 5 we said that in our opinion the distinction between quotas and goals was largely a matter of semantics. The plain facts are, however, that the Plan sets a definite minimum percentage requirement for employment of minority workers; requires an employer to commit himself to employ at least a corresponding minimum number of minority workers; and provides for sanctions for a failure to employ that number (unless the contractor can satisfy the agency personnel concerned that he has made every good faith effort to attain such number). It follows, therefore, that when such sanctions are applied they will be a direct result of the contractor's failure to meet his specified number of minority employees.

In our decision of August 5 we also said that the basic philosophy of the equal employment opportunities portion of the Civil Rights Act is that it shall be an unlawful employment practice to use race or national origin as a basis for hiring, or refusing to hire, a qualified applicant. And we said the Plan would necessarily require contractors to consider race and national origin in hiring.

In reply to the Department's contention that the Plan itself says a contractor's goals shall not be used to discriminate against any qualified applicant or employee, we expressed the opinion that the obligation to make every good faith effort to attain his

goals under the Plan will place contractors in situations where they will undoubtedly grant preferential treatment to minority group employees. Later, I will address this point again.

It is our opinion that the legislative history of the Civil Rights Act shows beyond question that Congress in legislating against discrimination in employment recognized the discrimination that is inherent in a quota system, and regarded the term "discrimination" as including the use of race or national origin as a basis for hiring; the assignment of numerical ratios based on race or national origin; and the maintaining of any racial balance in employees.

In considering Labor's contention that it could properly consider race or national origin under affirmative action programs established under Executive Orders, we pointed out that while the term "affirmative action" was included in Executive Order 10925, which was in effect at the time Congress was debating the bill which was subsequently enacted as the Civil Rights Act of 1964, no specific affirmative action requirements of the kind here involved had been imposed upon contractors under authority of that Executive Order at that time. We therefore did not think it could be successfully contended that Congress, in recognizing the existence of the Executive Order and in failing to specifically legislate against it, was approving or ratifying the type or methods of affirmative action which the present Plan imposes upon contractors.

While the Labor Department cited various court cases in support of its position that reverse discrimination may properly be used to correct the present results of past discrimination, our examination of those cases showed that the majority involved questions of education, housing, and voting. We said we could see a *material* difference between the circumstances in those cases and the circumstances which gave rise to the Philadelphia Plan, since in those cases enforcement of the rights of the minority to vote, or to have unsegregated housing, or unsegregated school facilities, did not deprive members of the majority group of similar rights, whereas in the employment field, each mandatory and discriminatory hiring of a minority group worker would preclude the employment of a member of the majority group. In those cases which did involve Title VII of the Civil Rights Act of 1964, we found them to be concerned with practices of labor unions or with treatment by employers of their employees in matters of seniority and promotion, and even in such circumstances, we found the courts to be divided between condoning and condemning the practice.

Our decision also pointed out that the effect of the Plan was to require an employer to abandon his customary practice of hiring through a local union if there is a racial or national origin imbalance in the membership of such union, and we concluded that such a requirement would be in violation of section 703(j) of the Act. We cited numerous portions of the legislative history of the Act which supports, we think, the view that Congress intended to prohibit and preclude the sort of program and procedures which are now included in the Philadelphia Plan when it drafted section 703(j).

In this connection we expressed the opinion that it would be improper to impose requirements on contractors to incur additional expenses in affirmative action programs which are designed to correct the discriminatory practices of unions, since such requirements would result in the expenditure of appropriated funds in a manner not contemplated by Congress. And we pointed out that if unions were, in fact, discriminating, they could be required to correct their discriminatory practices under provisions of the

National Labor Relations Act, under Title VII of the Civil Rights Act, and under section 207 of Executive Order 11246. We suggested use of one of these remedies.

Finally, we concluded that until the authority for any agency to impose or require conditions in invitations for bids which obligate bidders, contractors, or subcontractors, to consider the race or national origin of their employees or prospective employees, is clearly and firmly established by the weight of judicial precedent, or by additional statutes, we must consider conditions of the type proposed by the revised Philadelphia Plan to be in conflict with the Civil Rights Act of 1964, and we will necessarily have to so construe and apply the act in passing upon the legality of matters involving expenditures of appropriated funds for Federal or federally assisted construction projects.

On August 6, the day after our decision of August 5, the Secretary of Labor held a press conference at which he expressed the opinion that "interpretation of the Civil Rights Act has been vested by Congress in the Department of Justice"; that Justice had already decided that the Philadelphia Plan was not in conflict with the Act; that GAO properly could pass upon whether the Philadelphia Plan violated *procurement* law; and that Labor therefore had not choice but to follow the opinion of Justice and proceed to implement the Plan. For the record, it should be noted that the only Department of Justice opinion Labor had, at the time it issued the revised Plan and at the time the Secretary held his press conference, was one rendered in two short paragraphs by the Assistant Attorney General for the Civil Rights Division. On September 22, 1969, the Attorney General did, however, issue a formal opinion, which was essentially in the form of a critique of our August 5 decision.

The fundamental bases of the Attorney General's opinion are his contention that the Executive has authority to include in contracts made by the United States or financed with Government assistance any terms and conditions which are not contrary to a statutory prohibition or limitation on contractual authority; that the requirements imposed upon contractors by the Philadelphia Plan are not prohibited by the Civil Rights Act; and that the fact that the Act does not affirmatively require or authorize the imposition of such requirements upon all employers does not preclude their imposition by the Executive upon employers who enter into contracts with the Government or which are financed through Government assistance.

We believe that the argument with respect to the authority of the Executive to include terms and conditions in contracts falls to take into consideration two material factors: first, with respect to contracts executed by the Government, Congress has imposed a number of specific requirements and limitations, both procedural and substantive, entirely independent of and unrelated to the provisions of the Civil Rights Act, but which we believe to be material to the determination of the validity of the Plan; and second, with respect to contracts financed by Federal assistance, Congress has in the several acts authorizing such assistance prescribed the terms and conditions upon which it is to be furnished. With respect to the latter area, we do not believe it could be argued that the Executive has any authority from the Constitution or from any source other than those Congressional acts, and the Attorney General's argument is to that extent inapplicable to federally aided contracts or programs.

Considering the contractual authority of the Federal Government, it is recognized that the Executive agencies may, in the absence of contrary legislative provisions, perform their authorized functions and programs by any appropriate means, including the use of contracts. In doing so, however, they are

bound to observe all statutory provisions applicable to the making of public contracts. The Attorney General's opinion states that the power of the Government to determine the terms which shall be included in its contracts is subject to limitations imposed by the Constitution or by acts of Congress, but that existence of the power does not depend upon an affirmative legislative enactment.

Second to the statutory limitation that no contract shall be made unless it is authorized by law or is under an appropriation adequate to its fulfillment (41 U.S.C. 11) the most important congressional limitation on contracting is the requirement that Government contracts shall be made or entered into only after public advertising and competitive bidding, on such terms as will permit full and free competition. The purpose of the advertising statutes is not only to prevent frauds or favoritism in the award of public contracts, but also to secure for the Government the benefits of full and free competition.

The Supreme Court of the United States has adopted the policy, as set out in the procurement laws and regulations issued pursuant thereto, that competitive bidding should obtain the needs of the Government at prices calculated to result in the lowest ultimate cost to the Government. (*Paul v. United States*, 371 U.S. 245, 252 (1963)). Even before the decision by the Supreme Court the rule generally applied by my predecessors and at least one of the Attorney General's predecessors, and, so far as I know, never contested by any prior Attorney General, is that the inclusion in any contract of terms or conditions, not specifically authorized by law, which tend to lessen competition or increase the probable cost to the Government, are unauthorized and illegal. The situations in which this rule has been applied have most frequently involved proposals to impose stipulations concerning employment conditions or practices.

In 1890 the Attorney General advised the President as follows; with respect to a request of a labor organization for implementation of the act of June 25, 1868, which provided that eight hours shall constitute a day's work:

"Again sections 3709, etc., require contracts for supplies or service on behalf of the Government, except for prisoners' services, to be made with the lowest responsible bidder, after due advertisement. These statutes make no provision for the length of the day's work by the employees of such contractors, and a public officer who should let a contract for a larger sum than would be otherwise necessary by reason of a condition that a contractor's employees should only work eight hours a day would directly violate the law.

"In short, the statutes do not contain any such provision as would authorize or justify the President in making such an order as is asked. Nor does any such authority inhere in the Executive office. The President has, under the Constitution and laws, certain duties to perform, among these being to take care that the laws be faithfully executed; that is, that the other executive and administrative officers of the Government faithfully perform their duties; but the statutes regulate and prescribe these duties, and he has no more power to add to, or subtract from, the duties imposed upon subordinate executive and administrative officers by the law, than those officers have to add or subtract from his duties.

"The relief asked in this matter can, in my judgment, come only through additional legislation."

On the same principle our Office has held that a contract could not prescribe minimum wages in the absence of specific statutory authority (10 Comp. Gen. 294 (1931)); compliance with the National Labor Relations Act of 1935 could not be required

by contract, nor noncompliance therewith be made ground for rejection of a bid (17 Comp. Gen. 37 (1937)); periodic adjustment of minimum wages incorporated in a contract pursuant to the Davis-Bacon Act could not be stipulated in the contract (17 Comp. Gen. 471 (1937)); provisions of a Procurement Division Circular Letter purporting to require contractors to report payroll statistics could not be incorporated in Government contracts (17 Comp. Gen. 585 (1938)); construction contracts could not contain provisions concerning collective bargaining (18 Comp. Gen. 285 (1938)); a requirement for compliance with the Fair Labor Standards Act could not be included in Government contracts (20 Comp. Gen. 24 (1940)); a low bid on a Government contract could not be rejected because the bidder did not employ union labor (31 Comp. Gen. 561 (1952)); construction contracts could not include provisions for a 40-hour workweek and overtime compensation for excess time, when the only pertinent statute merely required overtime compensation for work in excess of eight hours per day (33 Comp. Gen. 477 (1954)); and a clause requiring contractors to comply with wage, hour and fringe benefit provisions resulting from a labor-management agreement could not be included in construction contracts in the absence of statutory authorization (42 Comp. Gen. 1 (1962)).

Of course, many of those proposed requirements were subsequently authorized by Congressional enactment and, together with other similar requirements, are today accepted features of Government contracting in the social-economic area. The point is, that they were not permitted until the Congress, rather than the Executive, had determined that they should be. So far as I know there was no attempt in any of those instances by the Executive branch to disregard the decisions of the Comptroller General.

In the face of this history, we cannot agree that the Attorney General's position that the Executive may impose upon contractors any conditions which have not been specifically prohibited, is correct.

In contending that the Plan is not in conflict with any provision of the Civil Rights Act, the Attorney General attempts to reconcile provisions of the Plan which we feel are irreconcilable. As summarized by the Attorney General, the Plan requires the contractor to set specific goals for minority group hiring, and to make "every good faith effort" to meet these goals. This, however, he says does not require the contractor to discriminate, because the Plan includes the express statement that he may not in attempting to meet his goals discriminate against any qualified employee on grounds or race, color, religion, sex, or national origin. As we stated in our decision of August 5 this is a statement of a practical impossibility. The provision is, in effect, no more than a statement of the provisions of the Civil Rights Act, and it is difficult to avoid the conclusion that the Attorney General is saying that no requirement, obligation or duty can be considered contrary to law if it is accompanied by a statement that in meeting it the law will not be violated.

It should also be noted that the Attorney General confines his argument to consideration of the provisions of Section 703(a) of the act, and ignores section 703(j), which in our view is an express prohibition against imposition of a program such as is included in the Plan.

Finally the Attorney General falls back on the plea that, while the Plan might be clearer if it stated what "good faith efforts" are expected, it must be assumed that the Plan will be so fairly administered that no contractor will be forced to choose between noncompliance with his obligation to achieve his goal and violation of the act. Therefore, he says, it is premature to assert the in-

validity of the Plan because of what may occur in its enforcement; any unfairness in administration should be left for judicial remedy.

The foregoing would indicate that the Attorney General does not fully recognize the pressure which the Plan will impose upon contractors to attain their minority group employee goals. A failure to achieve such goals will immediately place the contractor in the role of defendant, and to avoid sanctions he must then provide complete justification for his failure. Furthermore, in the first instance at least, the question whether he made every good faith effort will be determined by the same Federal personnel who imposed the requirement. In our opinion the coercive features inherent in the Plan cannot help but result in discrimination in both recruiting and hiring by contractors subject to the Plan.

In the final sentence of his opinion the Attorney General undertook to advise that the Department of Labor "and other contracting agencies and their accountable officers" may rely on his opinion in their administration of Executive Order 11246. We are especially concerned by this statement. In making it the Attorney General appears to have ignored completely section 304 of the Budget and Accounting Act of 1921, 31 U.S.C. 74, which provides that "Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government."

In this connection, I would like to point out as emphatically as I can that I believe that one of the most serious questions for the Subcommittee's consideration is whether the Executive branch of the Government has the right to act upon its own interpretation of the laws enacted by the Congress, and to expend and obligate funds appropriated by the Congress in a manner which my Office, as the designated agent of the Congress, has found to be contrary to law.

In our decision, we informed the Secretary of Labor that the General Accounting Office would regard the Plan as a violation of the Civil Rights Act in passing upon the legality of matters involving expenditures of appropriated funds for Federal or federally assisted construction. Our jurisdiction in that respect is derived from the authority and duty to audit and settle public accounts which was vested in and imposed upon the accounting officers of the Government by the act of March 3, 1817, 3 Stat. 366, and which was transferred to the General Accounting Office by the Budget and Accounting Act, 1921, 42 Stat. 24. Under section 8 of the Dockery Act of July 31, 1894, 28 Stat. 207, as amended by section 304 of the Budget and Accounting Act (31 U.S.C. 74), disbursing officers, or the head of any Executive departments, may apply for and the Comptroller General is required to render his decision upon any question involving a payment to be made by them, or under them, which decision, when rendered, shall govern the General Accounting Office in passing upon the account containing the disbursement. A similar provision concerning certifying officers and other employees appears at 31 U.S.C. 82d, which also provides that the liability of certifying officers or employees shall be enforced in the same manner and to the same extent as now provided by law with respect to enforcement of the liability of disbursing and other accountable officers. It is within the framework of these authorities that we propose to act in the enforcement of our decision of August 5, 1969.

The Attorney General's opinion concluded with the statement that the contracting agencies and their accountable officers could rely on his opinion. Considering the fact that the sole authority claimed for the Plan ordered by the Labor Department is the Executive order of the President, it is quite clear that the Executive branch of the Gov-

ernment is asserting the power to use Government funds in the accomplishment of a program not authorized by Congressional enactment, upon its own determination of authority and its own interpretation of pertinent statutes, and contrary to an opinion by the Comptroller General to whom the Congress has given the authority to determine the legality of expenditures of appropriated funds, and whose actions with respect thereto were decreed by the Congress to be "final and conclusive upon the Executive Branch of the Government." We believe the actions of officials of the Executive branch in this matter present such serious challenges to the authority vested in the General Accounting Office by the Congress as to present a substantial threat to the maintenance of effective legislative control of the expenditure of Government funds.

We believe the opinion of the Attorney General and the announced intention of the Labor Department to extend the provisions of the Plan to other major metropolitan areas can only create such widespread doubt and confusion in the construction industry and in the labor field (which may also be shared to a considerable extent by the Government's contracting and fiscal officers) as to constitute a major obstacle to the orderly prosecution of Federal and federally assisted construction. We further believe there is a definite possibility that, faced with a possibility of not being able to obtain prompt payment under contracts for such work as well as the probability of labor difficulties resulting from their efforts to comply with the Plan, many potential contractors will be reluctant to bid. Of course, if this occurs the Plan will result in restricting full and free competition as required by the procurement laws and regulations. Also, those who do bid will no doubt consider it necessary to include in their bid prices substantial contingency allowances to guard against loss.

In addition to recognizing the chaotic situation which could result from use of the Plan by the Executive agencies, I believe I would not be fulfilling my duties and responsibilities if I ignored the detrimental effect upon the competitive bidding process, and the improper use of public funds which the Plan entails.

On September 23, the day following the Attorney General's opinion, Labor issued another revised Philadelphia Plan which explains, for the first time, the manner in which the "ranges" of minority group employment goals have been determined, and the criteria for determining whether a contractor has made good faith efforts to attain his goals.

I stress that these matters are set out for the first time in the September revision of the Philadelphia Plan primarily because our decision of August 5 gave no consideration to the adverse effect that these factors, when established, might have upon application of the rules of competitive bidding to the overall Plan.

We fully expect to receive a bid protest in some future procurement which questions inclusion of the Philadelphia Plan in the IFB and the contract, and we realize the effect a decision sustaining such a protest could have on the construction industry, the contracting agencies and the disbursing officers. But we think the question is sufficiently important to justify and require such a decision.

Basically, it has been our position that the law is to be construed as written and enforced in accordance with the legislative intent when it was enacted. We believe this is what the law requires. Also, we are part of the Legislative branch of the Government and we think this approach is the only proper one we can take.

If, following enactment of a law, it should occur that social conditions, economic conditions, the political atmosphere, or any other circumstances should change to such an

extent that different treatment should be given, that different objectives should be established, or that different results should be obtained, it has always been our position that the arguments in favor of change should be presented to the Congress,—and if the Congress, in its wisdom, agrees that social, economic, or political circumstances so dictate, it will enact legislation to permit or require the Executive branch to take necessary action to attain new objectives. This is the very procedure which Congress directed should be followed in this particular situation. As we pointed out in our decision of August 5, 1969, by section 705(d) of the Civil Rights Act of 1964, Congress charged the Equal Employment Opportunity Commission with the specific responsibility of making reports to the Congress and to the President on the cause of and means of eliminating discrimination, and making such recommendations for further legislation as may appear desirable.

We concur with the authority of the Executive branch to establish and carry out social programs or policies which are not contrary to public policy, as that policy may be stated or necessarily implied by the Constitution, by Federal statutes or by judicial precedent. But we do not agree that where a statute, such as the Civil Rights Act of 1964, clearly enunciates Federal policy and the methods for enforcing such policy, the Executive may institute programs designed to achieve objectives which are beyond those contemplated by the statute by means prohibited by the statute.

We therefore hope that, as a result of these hearings, there will issue from Congress a clear and unequivocal indication of its will in this matter by which all parties concerned may be guided in their future actions.

This concludes my statement, Mr. Chairman. We will be pleased to answer any questions.

[Extract from American Bar Journal,
November 1969]

EXECUTIVE ORDER 11,246: EXECUTIVE
ENCROACHMENT

(By James E. Remmert)

(Section VII of the Civil Rights Act of 1964, forbidding discriminatory employment practices, was the product of legislative compromise. Executive Order 11,246, issued by President Johnson in 1965 and applicable to Government contractors, was the product of unilateral Executive judgment and consequently not only forbids discriminatory employment practices but requires employers to take affirmative action to ensure against them. Will the Executive always be serving a good cause when he uses the contract power to skirt the legislative process?)

The Civil Rights Act of 1964 was made the law of the land amidst great controversy, extended debate and considerable compromise. With far less controversy or compromise and with no Congressional debate, President Johnson on September 24, 1965, signed Executive Order 11,246, the latest in a series that has played at least as significant a role in implementing the objective of equal employment opportunity as has Title VII of the 1964 Civil Rights Act.¹ Section 202(1) of this

Since Title VII of the 1964 Civil Rights Act had to endure the rigors of passing both houses of Congress, it is the product of compromise attendant upon the legislative process. Executive Order 11,246, by comparison, was the responsibility of only the President. executive order, as amended, requires that every employer who is awarded a Government contract or subcontract that is not exempted by the Secretary of Labor must contractually undertake the obligation not to "discriminate against any employee or applicant for

employment because of race, color, religion, sex or national origin". Consequently, it imposes much broader substantive obligations, and the procedure adopted for its enforcement conveys to the enforcing agency significantly more authority than was given to the Equal Employment Opportunity Commission by the 1964 Civil Rights Act.

Evidence of the broader substantive obligation imposed by Executive Order 11,246 is the fact that Title VII imposes only the obligation not to do that which is prohibited, i.e., discriminate on the basis of race, color, religion, sex or national origin. By comparison, Executive Order 11,246 not only requires that Government contractors and subcontractors and discriminate but also that they "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin [Section 201(1); emphasis supplied]". Regulations issued by Secretary of Labor Willard Wirtz under authority of Executive Order 11,246 further require that Government contractors and subcontractors develop a "written affirmative action compliance program"² documenting the steps they have taken and setting goals and timetables for additional steps to fulfill the "affirmative action" obligation. The submission of these written programs has also been imposed as a prerequisite to the award of some Government contracts. However, on November 16, 1968, Comptroller General Elmer B. Staats ruled that "until provision is made for informing bidders of definite minimum requirements to be met by the bidder's program and any other standards or criteria by which the acceptability of such program would be judged", contract awards must be made to the lowest eligible bidder without reference to the affirmative action program.

PRESIDENT SIMPLY TOOK POWER THAT
CONGRESS WOULDN'T GIVE

That the Executive was willing to assume by executive order significantly greater enforcement authority than Congress was willing to convey to it can be seen by comparing the adjudicatory processes under Title VII and Executive Order 11,246. If an employer disagrees with the Equal Employment Opportunity Commission over the legal requirements imposed by Title VII, or if the employer is unable to comply with the remedies proposed by the commission to rectify a discriminatory practice, he may have, traditional recourse through the judicial process before any sanction is imposed. To the contrary, however, the regulations issued by Secretary of Labor Wirtz for the administration of Executive Order 11,246 provide that upon request for a hearing to adjudicate a contractor's or subcontractor's compliance with the executive order, the Secretary of Labor's designee may suspend all contracts or subcontracts held by the employer pending the outcome of the hearing.⁴ In addition, as a part of the adjudicatory process, the agency responsible for investigating or supervising the investigation of a contractor's compliance and prosecuting those contractors alleged to be in noncompliance is also responsible for imposing the sanctions of cancellation and suspension from participation in Government contracts.⁵ In other words, the chief investigator, prosecutor and final judge with respect to cancellation and suspension of Government contracts is the Department of Labor.

WITH THE CONTRACT POWER, WHO
NEEDS CONGRESS?

These substantive and procedural contrasts between Title VII of the 1964 Civil Rights Act and Executive Order 11,246 illustrate the considerable power that the Executive can acquire by pursuing a social objective through the use of the contract power

in addition to or in place of legislation. Such broad and sweeping powers are premised on the concept that the Federal Government has the "unrestricted power . . . to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases".⁶ This power is founded on the premise that in the absence of a Congressional prohibition or directive the Executive branch is free to enter into contracts on whatever conditions and provisions are deemed to promote the best interests of the Government.⁷

Without question, Executive Order 11,246 has done much to advance the cause of equal employment opportunity, because the Federal Government's bargaining position enables the Executive to require such terms as are found in this order as a condition to a United States Government contract. Once such a broad and sweeping obligation is accepted, the accepting contractor or subcontractor is in an untenable position to oppose steps that are required by the administering agency with respect to the conditions covered by the contract.

To illustrate the impact of this use of the Executive's contract power, one need only consider a list of the top 100 corporations and institutions holding Defense Department contracts.⁸ These corporations are understandably some of the largest in the United States and collectively employ well over ten million persons. Even though the list does not include contractors with any department other than Defense or the many subcontractors involved in Defense Department prime contracts, it aptly illustrates the significant indirect control which the Executive can exert over the private sector of the economy by use of the contract power.

There is very little case law deciding the extent to which the President may by executive order impose ancillary conditions to Government contracts. Some have questioned the validity of Executive Order 11,246 on the ground that the Executive does not have the authority to impose conditions that are unrelated to the purposes for which Congress appropriated funds⁹ and on the basis that the affirmative action obligation conflicts with provisions in the 1964 Civil Rights Act. These provide that preferential treatment on the basis of race, color, religion, sex or national origin is not required to correct an imbalance.¹⁰ However, at least one federal district court¹¹ and two United States courts of appeals¹² have said that Executive Order 11,246 has the full force and effect of statutory law. If these courts are correct and the order is a valid exercise of the Executive's contract power, then some examination of the potential extension of this power is in order.

Although the writer is unaware of any publication listing all firms holding competitively bid or negotiated United States Government contracts or subcontracts, it is the writer's belief that the vast majority of the major commercial enterprises in this country and a great many not-for-profit institutions and smaller commercial enterprises hold one or more Government contracts or subcontracts. Consider, for example, the diverse scope of the organizations holding Government research grants, the utilities and communications services used by federal installations, the dependence of such industries as automotive, aircraft, shipbuilding and munitions on Government contracts, the heavy reliance of the construction industry on such programs as urban renewal and highway construction sponsored by federal funding, and the entrenchment of United States Government financing and deposits as a factor in the financial institutions throughout the country.

WHERE DOES THIS PRECEDENT LEAD?

Consideration should also be given to some of the possible future applications of the

Footnotes at end of article.

concept behind Executive Order 11,246. The contract power could be used to circumvent the intrastate-interstate dichotomy that has to some extent precluded complete preeminence of the Federal Government in such fields as air and water pollution control, regulation of common carriers and labor relations. One extension already suggested by the AFL-CIO is the debarment of Government contractors found to have committed flagrant unfair labor practices.

Another avenue for extension of the Executive's contract power is in areas within federal jurisdiction but which Congress has left unregulated or has regulated only to a lesser extent than that deemed desirable by the Executive. An example of this use of the contract power is found in Executive Order 11,246. In enacting Title VII of the 1964 Civil Rights Act, the Congressional consensus was that the prohibition against discrimination on the basis of race, color, religion, sex and national origin was sufficient to accomplish the objective of eliminating employment discrimination on such bases.

The Executive, however, felt that the then-existing executive order prohibiting discrimination by Government contractors did not go far enough in dealing with the objective of equal employment opportunity, and thus the affirmative action obligation was added to place a greater responsibility on Government contractors.

By using the contract power, the Executive could accomplish many objectives deemed desirable without using the legislative process so long as the particular contract clause does not conflict directly with a federal statute. Thus, this technique affords the Executive a limited bypass of the legislative process and gives it the power to give its objective "the force and effect given to a statute enacted by Congress"¹² without the concurrence of Congress.

Several questions should be answered before this procedure proliferates. The first is whether the concentration of this power in the hands of the Executive is desirable in view of the fact that it allows the President to carry an objective into effect without resort to the legislative process established by the Constitution. In this connection, it is significant to note that Congress considered sanctioning the Executive's use of the contract power to achieve equal employment opportunity but rejected the idea. The original House bill (H.R. 7152) that eventually became the 1964 Civil Rights Act, after numerous amendments, contained a Section 711 (b), which read as follows:

"The President is authorized to take such action as may be appropriate to prevent the committing or continuing of an unlawful employment practice by a person in connection with the performance of a contract with an agency or instrumentality of the United States."

During the consideration of H.R. 7152 by the House, Congressman Emanuel Celler (D. N.Y.) sponsored an amendment to eliminate this section of the bill. The amendment was accepted by the House, and in the course of the discussion Congressman John Dowdy (D. Tex.) voiced the view that, "Many of us felt section 711 to be a highly dangerous section of the bill and accordingly much of our debate has been predicated upon the fact that this language should be removed."¹³

With reference to Executive Order 11,246, it has been argued that although this use of the contract power is extraordinary the need for equal employment opportunity justifies this departure from traditional concepts. Those who would rush to the conclusion that the cause of equal employment opportunity does justify a departure from the legislative process would do well to remember that the sword of Executive power cuts in two directions. Thus, the first question that should be considered in connection with Executive Order 11,246 is not whether equal

employment opportunity should be pursued but whether this means is consistent with the basic framework and power balance with which our form of government has successfully endured innumerable crises over the last two centuries.

HISTORY THAT SHOULD BE REPEATED

At another time in our nation's history, the Supreme Court had occasion to consider whether a crisis of similar magnitude justified an expansion of Executive power. In holding that President Truman's executive order seizing the steel mills during the Korean conflict was unconstitutional despite the pending emergency, Justice Douglas in a concurring opinion gave the sage advice that:

"The language of the Constitution is not ambiguous or qualified. It places not some legislative power in the Congress; Article 1, Section 1 says "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

"Today a kindly President uses the seizure power to effect a wage increase and to keep the steel furnaces in production. Yet tomorrow another President might use the same power to prevent a wage increase, to curb trade-unionists, to regiment labor as oppressively as industry thinks it has been regimented by this seizure."¹⁴

In a separate concurring opinion in the same case, Justice Jackson expressed a similar view concerning the overreaching use of Executive power that is highly relevant and appropriate to the concept behind Executive Order 11,246:

"The opinions of judges, no less than executives and publicists, often suffer the infirmity of confusing the issue of a power's validity with the cause it is invoked to promote, of confounding the permanent executive office with its temporary occupant. The tendency is strong to emphasize transient results upon policies—such as wages or stabilization—and lose sight of enduring consequences upon the balanced power structure of our Republic."¹⁵

CONGRESS DOES NOT BELONG ON THE SIDELINES

Congress should give thoughtful consideration to and develop a considered national policy on the use of the contract power exemplified by Executive Order 11,246 rather than stand on the sidelines and allow its proliferation without Congressional guidance. Congress should decide the kind of contracts and the kind of ancillary obligations that it will allow the Executive to impose in disbursing the funds that Congress appropriates. A mechanism should be established that will insure a legislative watchdog over the Executive's use of the contract power and will allow the Executive sufficient flexibility to administer efficiently the disbursement of Congressional appropriations.

With specific reference to Executive Order 11,246, Congress should eliminate the double standard that now exists between employers generally, who are required not to discriminate by Title VII of the 1964 Civil Rights Act, and employers who, as Government contractors, are subject to a different standard and a different enforcement procedure in measuring their compliance with the obligation. The identical obligation imposed by Title VII of the 1964 Civil Rights Act should apply, procedurally, substantively and with equal vigor to Government contractors without reference to the extraordinary obligation to take "affirmative action". There is no justification for the multiplicity of government agencies enforcing Title VII of the 1964 Civil Rights Act and Executive Order 11,246. At present, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance and every agency that awards Government contracts are all involved in enforcement activities. This duplication has

produced inconsistent enforcement standards, confusion and a wasteful use of Government manpower and resources.

Congress should immediately take appropriate steps properly to realign Congressional and Executive authority, and in doing so it might well consider some further words from Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Company v. Sawyer*. In referring to the overextended use of the executive order, Justice Jackson said:

"Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction."

"With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations."¹⁶

FOOTNOTES

¹ 42 U.S.C. § 2000c.

² 41 C.F.R. § 60-1.40.

³ Comptroller General's Letter B-163026.

⁴ 41 C.F.R. § 60-1.26 (b) (2) (iii).

⁵ 41 C.F.R. § 60-1.24 and 41 C.F.R. § 60-1.27.

⁶ *Perkins v. Lukens Steel*, 310 U.S. 113, at 127 (1940).

⁷ *Kern-Limerick v. Scurlock*, 347 U.S. 110 (1954).

⁸ TIME, June 28, 1968, at 72.

⁹ See Pasley, *The Nondiscrimination Clause in Government Contracts*, 43 VA. L. REV. 837 (1957).

¹⁰ 42 U.S.C. § 200e-2 (j).

¹¹ *United States v. Local 189, United Papermakers & Paperworkers*, 282 F. Supp. 39, 43 (E.D. La. 1968).

¹² *Farkas v. Texas Instrument*, 375 F.2d 629, 632 (5th Cir. 1967), and *Farmer v. Philadelphia Electric Company*, 329 F.2d 3, 8 (3d Cir. 1964).

¹³ *Farkas v. Texas Instrument*, 375 F.2d at 632.

¹⁴ 110 CONG. REC. 2575 (February 8, 1964).

¹⁵ *Youngstown Sheet & Tube Company v. Sawyer*, 343 U.S. 579, at 630, 633-634 (1952).

¹⁶ 343 U.S. at 634.

¹⁷ 343 U.S. at 653, 655.

U.S. SENATE,

Washington, D.C., November 14, 1969.

HON. ELMER B. STAATS,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: Permit me to acknowledge your letter of November 12, 1969, with which you enclosed a copy of your statement to the Subcommittee on Separation of Powers, Senate Committee on the Judiciary, concerning the revised "Philadelphia Plan" of the Department of Labor.

I share your opinion that the action of certain officials of the Executive Branch with respect to implementation of this plan without regard to your decision of August 5, 1969, constitutes a threat to Legislative Branch control of Federal expenditures.

I want to assure you that you will have my support in your efforts to preclude the expenditure of appropriated funds under contracts subject to the revised "Philadelphia Plan" until its legality has been established by judicial decision or Congressional action.

With best wishes, I am

Sincerely,

RICHARD B. RUSSELL.

U.S. SENATE,

COMMITTEE ON PUBLIC WORKS,
Washington, D.C., November 25, 1969.

HON. ELMER B. STAATS,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: Thank you for your letter of November 12, 1969 enclosing a copy of your statement before the Subcommittee on Separation of Powers of

the Senate Judiciary Committee setting forth your views and recommendations on the Department of Labor "Philadelphia Plan".

As you are doubtless aware, the subject of equal employment has been of special concern to me and the members of the Committee on Public Works because of the problem situations that have arisen in the area of highway construction. Therefore, I am sure that your statement will be of even greater interest and will be most helpful to us in future consideration of the problems of equal employment.

With warm personal regards,

Truly,

JENNINGS RANDOLPH,
Chairman.

U.S. SENATE, COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., November 13, 1969.

Hon. ELMER B. STAATS,
Comptroller of the United States,
Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: I have your letter of November 12, with enclosure, and concur in the statement you submitted to the Subcommittee on Separation of Powers on the "Philadelphia Plan."

Please be assured of my continued support. With kindest personal regards, I am

Sincerely yours,

JOHN L. MCCLELLAN,
Chairman.

U.S. SENATE,
Washington, D.C., November 13, 1969.

Hon. ELMER B. STAATS,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: Thank you for your November 12 letter and the attached copy of your October 28 statement to the Senate Judiciary Subcommittee on Separation of Powers reaffirming your conclusion that the so-called "Philadelphia Plan" is illegal and indicating that you will use the power of your office to bar spending of federal funds for contracts which include the plan's provisions in the absence of a court or Congressional ruling to the contrary.

I appreciate your letting me know of your position, and I think it is a sound one.

I feel as you do that the plan clearly goes beyond the intent of Congress in attempting to establish required levels of racial employment in a manner not authorized by the civil rights law.

With all best regards,

Sincerely,

B. EVERETT JORDAN.

HOUSE OF REPRESENTATIVES,
Washington, D.C., November 24, 1969.

Hon. ELMER B. STAATS,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. STAATS: I commend you for the forthright and compelling statement you forwarded to me concerning the revised Philadelphia Plan.

Time and again I have stressed my own reservations to the approach of the Plan. While equalization of employment opportunity for all may be a commendable aim, it should not be pursued in a manner calculated to either thwart the will of Congress or erode the separation of powers and responsibilities which has been the genius and high art of our system of Government.

Whatever the question, whatever the merits, a democratic society should never allow desirable short-term goals to obfuscate or override faithful adherence to principles and institutions which have made the country great and, more importantly, free.

When Congress, as the representative of

the people, speaks, the Executive should listen. What kind of Government have we if it does not!

With kindest personal regards, I am,

Sincerely,

WILLIAM C. CRAMER.

U.S. SENATE,

COMMITTEE ON THE JUDICIARY,
Washington, D.C., November 17, 1969.

The Hon. ELMER B. STAATS,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: I want to commend you for holding fast to your position on the Department of Labor's revised Philadelphia Plan. I agree with you entirely; the Philadelphia Plan is in patent conflict with the Civil Rights Act of 1964, and its continuation does constitute a threat to maintenance of legislative control over budget expenditures by the Executive branch of government.

Several days ago, I contacted the Department of Labor and requested that the Department amplify its views on two questions: whether a contractor would be absolved of responsibility if union exclusion were responsible for his failure to meet his goal, and how the Department can justify disregarding a "final and conclusive" decision of the Comptroller General. I have been promised an answer within the next few days, and I will inform you immediately of what the Department says.

Be assured that I will continue to give you active support in your efforts.

With all kind wishes, I am

Sincerely yours,

SAM J. ERVIN, Jr.,
Chairman, Subcommittee on
Separation of Powers.

MEMORANDUM OF U.S. DEPARTMENT OF LABOR,
JUNE 27, 1969

To: Heads of all agencies.

From: Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards.

Subject: Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

1. PURPOSE

The purpose of this Order is to implement the provisions of Executive Order 11246, and the rules and regulations issued pursuant thereto, requiring a program of equal employment opportunity by Federal contractors and subcontractors and Federally-assisted construction contractors and subcontractors.

2. APPLICABILITY

The requirements of this Order shall apply to all Federal and Federally-assisted construction contracts for projects the estimated total cost of which exceeds \$500,000, in the Philadelphia area, including Bucks, Chester, Delaware, Montgomery and Philadelphia counties in Pennsylvania.

3. POLICY

In order to promote the full realization of equal employment opportunity on Federally-assisted projects, it is the policy of the Office of Federal Contract Compliance that no contracts or subcontracts shall be awarded for Federal and Federally-assisted construction in the Philadelphia area on projects whose cost exceeds \$500,000 unless the bidder submits an acceptable affirmative action program which shall include specific goals of minority manpower utilization, meeting the standards included in the invitation or other solicitation for bids, in trades utilizing the following classifications of employees: Iron workers, plumbers, pipefitters, steamfitters, sheetmetal workers, electrical workers, roofers and water proofers, and elevator construction workers.

4. FINDINGS

Enforcement of the nondiscrimination and affirmative action requirements of Executive Order 11246 has posed special problems in the construction trades. Contractors and subcontractors must hire a new employee complement for each construction job and out of necessity or convenience they rely on the construction craft unions as their prime or sole source of their labor. Collective bargaining agreements and/or established custom between construction contractors and subcontractors and unions frequently provide for, or result in, exclusive hiring halls; even where the collective bargaining agreement contains no such hiring hall provisions or the custom is not rigid, as a practical matter, most people working in these classifications are referred to the jobs by the unions. Because of these hiring arrangements, referral by a union is a virtual necessity for obtaining employment in union construction projects, which constitute the bulk of commercial construction.

Because of the exclusionary practices of labor organizations, there traditionally has been only a small number of Negroes employed in these seven trades. These exclusionary practices include: (1) unfair to admit Negroes into membership and into apprenticeship programs. At the end of 1967, less than one-half of one percent of the membership of the unions representing employees in these seven trades were Negro, although the population in the Philadelphia area during the past several decades included substantial numbers of Negroes. As of April 1965, the Commission on Human Relations in Philadelphia found that unions in five trades (plumbers, steamfitters, electrical workers, sheet metal workers and roofers) were "discriminatory" in their admission practices. In a report by the Philadelphia Local AFL-CIO Human Relations Committee made public in 1964, virtually no Negro apprentices were found in any of the building trades classes; (2) failure of the unions to refer Negroes for employment, which has resulted in large measure from the priorities in referral granted to union members and to persons who had work experience under union contracts.

On November 30, 1967, the Philadelphia Federal Executive Board put into effect the Philadelphia Pre-Award Plan. The Federal Executive Board found that the problem of compliance with the requirements of Executive Order 11246 was most apparent in Philadelphia in eight construction trades: electrical, sheetmetal, plumbing and pipefitting, steamfitting, roofing and waterproofing, structural iron work, elevator construction and operating engineers; and that local unions representing employees in these trades in the Philadelphia area had few minority group members and that few minority group persons had been accepted in apprenticeship programs. In order to assure equal employment opportunity on Federal and Federally-assisted construction in the Philadelphia area, the plan required that each apparent low bidder, to qualify for a construction contract or subcontract, must submit a written affirmative action program which would have the results of assuring that there will be minority group representation in these trades.

Since the Philadelphia Plan was put into effect, some progress has been made. Several groups of contractors and Local 543 of the International Union of Operating Engineers have developed an area program of affirmative

¹ Marshall and Briggs, *Negro Participation in Apprenticeship Programs* (Dec. 1966), pg. 91.

² These findings were based on a detailed examination of available facts relating to building trades unions, area construction volume and demographic data.

tive action which has been approved by OFCC in lieu of other compliance procedures, but subject to periodic evaluation. The original Plan was suspended because of an Opinion by the Comptroller General that it violated the principles of competitive bidding. * * *

6. SPECIFIC GOALS AND DEFINITE STANDARDS

a. General

The OFCC Area Coordinator, in cooperation with the Federal contracting or administering agencies in the Philadelphia area, will determine the definite standards to be included in the invitation for bids or other solicitation used for every Federally-involved construction contract in the Philadelphia area, when the estimated total cost of the construction project exceeds \$500,000. Such definite standards shall specify the range of minority manpower utilization expected for each of the designated trades to be used during the performance of the construction contract. To be eligible for the award of the contract, the bidder must, in the affirmative action program submitted with his bid, set specific goals of minority manpower utilization which meet the definite standard included in the invitation or other solicitation for bids unless the bidder participates in an affirmative action program approved by OFCC.

b. Specific goals

1. The setting of goals by contractors to provide equal employment opportunity is required by Section 60-1.40 of the Regulations of this Office (41 CFR § 60-1.40). Further, such voluntary organization of businessmen as Plans for Progress have adopted this sound approach to equal opportunity just as they have used goals and targets for guiding their other business decisions (See the Plans for Progress booklet *Affirmative Action Guidelines* on page 6.)

2. The purpose of the contractor's commitment to specific goals is to meet the contractor's affirmative action obligations and is not intended and shall not be used to discriminate against any qualified applicant or employee.

c. Factors used in determining definite standards

A determination of the definite standard of the range of minority manpower utilization shall be made for each better-paid trade to be used in the performance of the contract. In determining the range of minority manpower utilization that should result from an effective affirmative action program, the factors to be considered will include, among others, the following:

1. The current extent of minority group participation in the trade.
2. The availability of minority group persons for employment in such trade.
3. The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.
4. The impact of the program upon the existing labor force.

7. INVITATION FOR BIDS OR OTHER SOLICITATIONS FOR BIDS

Each Federal agency shall include, or require the applicant to include, in the invitation for bids, or other solicitation used for a Federally-involved construction contract, when the estimated total cost of the construction project exceeds \$500,000, a notice stating that to be eligible for award, each bidder will be required to submit an acceptable affirmative action program consisting of goals as to minority group participation for the designated trades to be used in the performance of the contract—whether or not the work is subcontracted. Such notice shall include the determination of the range of minority group utilization (described in Section 6 above) that should result from an effective affirmative action program based on an evaluation of the factors listed in Section 6c. The form of such notice shall be substantially similar to the one attached as

an appendix to this Order. To be acceptable, the affirmative action program must contain goals which are at least within the range described in the above notice. Such goals must be provided for each designated trade to be used in the performance of the contract except that goals are not required with respect to trades covered by an OFCC approved multi-employer program.

8. POST-AWARD COMPLIANCE

a. Each agency shall review contractors' and subcontractors' employment practices during the performance of the contract. If the goals set forth in the affirmative action program are being met, the contractor or subcontractor will be presumed to be in compliance with the requirements of Executive Order 11246, as amended, unless it comes to the agency's attention that such contractor or subcontractor is not providing equal employment opportunity. In the event of failure to meet the goals, the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment. In any proceeding in which such good faith performance is in issue, the contractor's entire compliance posture shall be reviewed and evaluated in the process of considering the imposition of sanctions. Where the agency finds that the contractor or subcontractor has failed to comply with the requirements of Executive Order 11246, the implementing regulations and its obligations under its affirmative action program, the agency shall take such action and impose such sanctions as may be appropriate under the Executive Order and the regulations. Such noncompliance by the contractor or subcontractor shall be taken into consideration by Federal agencies in determining whether such contractor or subcontractor can comply with the requirements of Executive Order 11246 and is therefore a "responsible prospective contractor" within the meaning of the Federal procurement regulations.

b. It is no excuse that the union with which the contractor has a collective bargaining agreement failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964. It is the longstanding uniform policy of OFCC that contractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in Federally-involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, or the implementing rules, regulations and orders.

9. EXEMPTIONS

a. Requests for exemptions from this Order must be made in writing, with justification, to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C., 20210, and shall be forwarded through and with the endorsement of the agency head.

b. The procedures set forth in the Order shall not apply to any contract when the head of the contracting or administering agency determines that such contract is essential to the national security and that its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within thirty days.

c. Nothing in this Order shall be interpreted to diminish the present contract compliance review and complaint programs.

10. AUTHORITY

This Order is issued pursuant to Executive Order 11246 (30 F.R. 12319, Sept. 28, 1965) Parts II and III; Executive Order 11375 (32 F.R. 14303, Oct. 17, 1967); and 41 CFR Chapter 60.

11. EFFECTIVE DATE

The provisions of this Order will be effective with respect to transactions for which the invitations for bids or other solicitations for bids are sent on or after July 18, 1969.

APPENDIX

(For Inclusion in the Invitation or Other Solicitation for Bids for a Federally-Involved Construction Contract When the Estimated Total Cost of the Construction Project Exceeds \$500,000.)

Notice of requirement for submission of affirmative action plan to ensure equal employment opportunity:

1. It has been determined that in the performance of this contract an acceptable affirmative action program for the trades specified below will result in minority manpower utilization within the ranges set forth next to each trade:

Identification of trade

Range of minority group employment

2. The bidder shall submit, in the form specified below, with his bid an affirmative action program setting forth his goals as to minority manpower utilization in the performance of the contract in the trades specified below, whether or not the work is subcontracted.

The bidder submits the following goals of minority manpower utilization to be achieved during the performance of the contract:

Identification of trade

Estimated total employment for the trade on the contract

Number of minority group employees

(The bidder shall insert his goal of minority manpower utilization next to the name of each trade listed.)

3. The bidder also submits that whenever he subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he will obtain from such subcontractor an appropriate goal that will enable the bidder to achieve his goal for that trade. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth in paragraph 1 above, provided, however, that participation by the bidder in multi-employer program approved by the Office of Federal Contract Compliance will be accepted as satisfying the requirements of this Notice in lieu of submission of goals with respect to the trades covered by such multi-employer program. In the event that such multi-employer program is applicable, the bidder need not set forth goals in paragraph 2 above for the trades covered by the program.

5. For the purpose of this Notice, the term minority means Negro, Oriental, American Indian and Spanish Surnamed American. Spanish Surnamed American includes all persons of Mexican, Puerto Rican, Cuban or Spanish origin or ancestry.

6. The purpose of the contractor's commitment to specific goals as to minority manpower utilization is to meet his affirmative action obligations under the equal opportunity clause of the contract. This commitment is not intended and shall not be used to discriminate against any qualified applicant or employee.

7. Nothing contained in this Notice shall

relieve the contractor from compliance with the provisions of Executive Order 11246 and the equal opportunity clause of the contract with respect to matters not covered in this Notice, such as equal opportunity in employment in trades not specified in this Notice.

8. The bidder agrees to keep such records and to file such reports relating to the provisions of this Order as shall be required by the contracting or administering agency.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., September 23, 1969.

ORDER

To: Heads of all agencies.

From: Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards; John L. Wilks, Director, Office of Federal Contract Compliance.

Subject: Establishment of Ranges for the Implementation of the Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involvement Construction.

1. PURPOSE

The purpose of this Order is to implement Section 6 of the Order issued on June 27, 1969 by Assistant Secretary of Labor Arthur A. Fletcher to the Heads of Agencies outlining a "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involvement Construction." Section 6 of the June 27 Order provides for the determination of definite standards in terms of ranges of minority manpower utilization. This Order also affirms and in certain respects amends the Order of June 27.

2. BACKGROUND

The June 27 Order requires a bidder on Federal or Federally-assisted construction in the Philadelphia area on projects whose cost exceeds \$500,000 to submit an acceptable affirmative action program which shall include specific goals of minority manpower utilization within the ranges to be established by the Department of Labor, in cooperation with the Federal contracting and administering agencies in the Philadelphia Area, within the following 7 listed classifications:

Iron workers; Plumbers, pipefitters; Steamfitters; Sheetmetal workers; Electrical workers; Roofers and water proofers; and Elevator construction workers.

Since that time the Department has determined that minority craftsmen may be adequately represented in the classification and title "roofers and water proofers". For this reason, such classification is hereby temporarily excepted from the provisions of the "Revised Philadelphia Plan," subject to further examination of that trade.

Pursuant to a notice of hearing issued on August 16, 1969, representatives of the Department of Labor conducted a public hearing in Philadelphia on August 26, 27, and 28, 1969 for the purpose of obtaining information and data relevant to the establishment of ranges for the purpose of effectuating the above-referred to June 27, 1969 Order. Section 6 of such Order provides that the following factors, among others, will be used in establishing these ranges:

(a) The current extent of minority group participation in the trade.

(b) The availability of minority group persons for employment in such trade.

(c) The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.

(d) The impact of the program upon the existing labor force.

Having reviewed the record of that hearing and additional relevant data gathered and compiled by the Department of Labor, the following findings and Order are made as contemplated by the Order of June 27, 1969.

3. FINDINGS

(a) *Minority Participation in the Specified Trades:* The over-all construction industry in the five county Philadelphia area has a current minority representation of employees of 30%. Comparable skilled trades, excluding laborers, have a minority representation of approximately 12%. The construction trades in the Philadelphia area have grown and developed under similar conditions concerning manpower availability and under identical economic and cultural circumstances. Despite that fact, there are few minorities in the above-designated six trades. The evidence adduced at the public hearing indicates that the minority participation in such trades is approximately 1%. In the June 27 Order, it was found that such a low rate of participation is due to the traditional exclusionary practices of these unions in admission to membership and apprenticeship programs and failure to refer minorities to jobs in these trades. The most reliable data available relates to minority participation in membership in the unions representing employees in the six trades. That data reveals the following:

(1) *Iron Workers:* The total union membership in this craft in the Philadelphia area in 1969 is 850, 12 of whom (1.4%) are minority group representatives.

(2) *Steamfitters:* Total union membership in the Philadelphia area in 1969 stands at 2,308, 13 of whom (.65%) are minority group representatives.

(3) *Sheetmetal Workers:* Total union membership in the Philadelphia area in 1969 stands at 1,688, 17 of whom (1%) are minority group representatives.

(4) *Electricians:* Total union membership in the Philadelphia area in 1969 stands at 2,274, 40 of whom (1.76%) are minority group representatives.

(5) *Elevator construction workers:* Total union membership in the Philadelphia area in 1969 stands at 562, 3 of whom (.54%) are minority group representatives.

(6) *Plumbers & Pipefitters:* Total union membership in the Philadelphia area in 1969 stands at 2,335, 12 of whom (.51%) are minority group representatives.

Based upon these figures it is found and determined that the present minority participation in the six named trades is far below that which should have reasonably resulted from participation in the past without regard to race, color and national origin and, further, that such participation is too insignificant to have any meaningful bearing upon the ranges established by this Order.

(b) *Availability of Minority Group Persons for Employment:* The nonwhite unemployment rate in the Philadelphia area is approximately twice that for the labor force as a whole and the total number of nonwhite persons unemployed is approximately 21,000. There is also a substantial number of persons in the nonwhite labor force who are underemployed. Testimony adduced at the hearing indicates that there are between 1,200 and 1,400 minority craftsmen presently available for employment in the construction trades who have been trained and/or had previous work experience in the trades. In addition it was revealed at the hearing that there is a pool of 7,500 minority persons in the Laborers Union who are working side by side with journeymen in the performance of their crafts in the construction industry. Many of these persons are working as helpers to the journeymen in the designated trades. Also, testimony at the hearings established that between 5,000 and 8,000 prospective minority craftsmen would be prepared to accept training in the construction crafts within a year's time if they would be assured that jobs were available to them upon completion of such training.

Surveys conducted by agencies of the U.S. Department of Labor have provided additional information relative to the availabil-

ity of minority group persons for employment in the designated trades.

Based upon the number of minority group persons employed in the designated trades for all industries (construction and non-construction) and those minority group persons who are unemployed but qualified for employment in the designated trades, a survey by the Manpower Administration indicated that minority group persons are now in the area labor market as follows:

Identification of trades and number

available:

Ironworkers	302
Plumbers, pipefitters and steamfitters	797
Sheetmetal workers	250
Electrical workers	745

A survey by the Office of Federal Contract Compliance indicated that the following number of minority persons are working in the designated trades and those who will be trained by 1970 by major Philadelphia recruitment and training agencies and those working in related occupations in non-construction industries who would be qualified for employment in the designated trades with some orientation or minimal training:

Identification of trades and number

available:

Ironworkers	75
Plumbers, pipefitters	500
Steamfitters	300
Sheetmetal workers	375
Electrical workers	525
Elevator constructors	43

Based upon this information it is found that a substantial number of minority persons are presently available for productive employment.

(c) *The Need for Training:* Testimony at the public hearing revealed that there is a need for training programs for willing minority group persons at various levels of skill. Such training must necessarily range from pre-apprenticeship training programs through programs providing incidental training for skilled craftsmen who are near the of full journeyman status.¹ As discussed above, between 5,000 and 8,000 minority group persons are in a position to be recruited for such training within a year's time.

Testimony at the public hearings revealed the existence of several training programs which have operated successfully to train a number of craftsmen many of whom are now prepared to enter the trades in the construction industry. In order to further assure the availability of necessary training programs, the Manpower Administration of this Department has committed substantial funds for the development of additional apprenticeship outreach programs and journeyman training programs in the Philadelphia area. It plans to double the present apprenticeship outreach program with the Negro Union Leadership Council in Philadelphia. Presently, this program is funded for \$78,000 to train seventy persons. An additional \$80,000 is being set aside to expand this program. In addition, immediate exploration of the feasibility of a journeyman-training program for approximately 180 trainees will be undertaken. Both these programs will be directed specifically to the designated trades.²

(d) *The Impact of the Program Upon the Existing Labor Force:* A national survey of the Bureau of Labor Statistics indicates that

¹ Testimony adduced at the hearings indicates that the traditional duration of training to develop competent workmen in the crafts may be longer than necessary to successfully perform substantial amounts of craft level work.

² Memorandum from Arnold R. Weber, Assistant Secretary for Manpower to Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards, dated September 18, 1969.

the present annual attrition rate of construction trade membership due to retirement is 2.5% per year based upon a total working life of 44 years per employee in each of the above-designated trades.

Based on national actuarial rates for the construction industry published by the National Safety Council, the average disability occurrence rate resulting from death or injury is 1% per year. A conservative estimate of the average rate at which employees leave construction crafts for all reasons other than death, disability and retirement is 4% per year.

Therefore, each construction craft should have approximately 7.5% new job openings each year without any growth in the craft. The annual growth in the number of employees in each craft designated under this "Revised Philadelphia Plan" has been and is projected to be as follows:

(1) *Iron Workers.* The average annual growth rate since 1963 has been approximately 10%. It is projected that an average annual growth rate in employment will be 3.69% in the near future.⁸

(2) *Plumbers and Pipefitters.* The average annual growth rate since 1963 has been approximately 7.38%. It is projected that an average annual growth rate in employment will be 2.9% in the near future.

(3) *Steamfitters.* The average annual growth rate since 1963 has been approximately 2.63% and is projected to be approximately 2.5% for each of the next four years.

(4) *Sheetmetal workers.* The average annual growth rate since 1963 has been approximately 2.06% and is projected to be approximately 2.0% for each of the next four years.

(5) *Electricians.* The average annual growth rate since 1963 has been approximately 4.98%. It is projected that an average annual growth rate in employment will be 2.2% in the near future.

(6) *Elevator Construction Workers.* The average annual growth rate since 1963 has been approximately 2.41% and is projected to be approximately 2.1% for each of the next four years.

Adding the rate of jobs becoming vacant due to attrition to the rate of new jobs due to growth, the total rate of new jobs projected for each craft is as follows:

Percentage of annual vacancy rate

Identification of trade:

Ironworkers	11.2
Plumbers and pipefitters	10.4
Steamfitters	10
Sheetmetal workers	9.5
Electrical workers	9.7
Elevator construction workers	9.6

Therefore, it is found and determined that a contractor could commit to minority hiring up to the annual rate of job vacancies for each trade without adverse impact upon the existing labor force.

(e) *Timetable:* In an effort to provide practical ranges which can be met by employers in hiring productive trained minority craftsmen, this Order should be developed to cover an extended period of time.

The average length of Federally-involved construction projects in the Area is between 2 and 4 years. Testimony at the hearing indicated that a 4 year duration for the "Plan" is proper.

Therefore, it is found and determined that in order for this Order to effect equal employment to the fullest extent, the standards of minority manpower utilization should be determined for the next four years.

⁸ Projections of the annual growth rate in employment in the designated trades is based on a study by the Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Employment Security, entitled *1960 Census and 1970, 1975 Projected Total Employment*.

(f) *Conclusion of Findings:* It is found that present minority participation in the designated trades is far below that which should have reasonably resulted from participation in the past without regard to race, color, or national origin and, further, that such participation is too insignificant to have any meaningful bearing upon the ranges established by this Order.

It is found that a significant number of minority group persons is presently available for employment as journeymen, apprentices, or other trainees.

It is found that there is a need for training programs for willing minority group persons at various levels of skills. There exist several training programs in the Philadelphia area which have operated successfully to train craftsmen prepared to enter the construction industry and, in addition, the Manpower Administration of this Department has committed substantial funds for the development of other apprenticeship outreach programs and journeyman training programs in the Philadelphia area.

Finally, it is found that a contractor could commit himself to hiring minority group persons up to the annual rate of job vacancies for each trade without adverse impact upon the existing labor force in the designated trades.

Based upon these findings, a range shall be established by this Order which shall require contractors to establish employment goals between a low range figure which could result in approximately 20% of the workforce in each designated trade being minority craftsmen at the end of the fourth year covered by this Order.⁴

In addition, trained and trainable minority persons are or shall be available in numbers sufficient to fill the number of jobs covered by these ranges, there being 1200 to 1400 minority persons who have had training and 5000 to 8000 prepared to accept training within a year.

Such minority representation can be accomplished without adversely affecting the present work force. Based upon the projected Annual Vacancy Rate, the lower range figure may be met by filling vacancies and new jobs approximately on the basis of one minority craftsman for each non-minority craftsman.⁵

4. ORDER

Therefore, after full consideration and in light of the foregoing, be it **ORDERED:** That the Order of June 27, 1969 entitled "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction" is hereby implemented, affirmed, and in certain respects amended, this Order to constitute a supplement thereto as required and contemplated by said Order of June 27, 1969.

Further ordered: That the following ranges are hereby established as the standards for minority manpower utilization for each of the designated trades in the Philadelphia area for the next four years:

Range for minority group employment until Dec. 31, 1970

[Percent]

Identification of trade:

Ironworkers	15-9
Plumbers and pipefitters	5-8

⁴ Assuming the same proportion of minorities are employed on private construction projects as Federally-involved projects, the lower range should result in 2,000 minority craftsmen being employed in the construction industry in the Philadelphia area by the end of the fourth year.

⁵ The one for one ratio in hiring has been judicially recognized, as a reasonable, if not mandatory, requirement to remedy past exclusionary practices. *Vogler v. McCarty, Inc.*, 294 F. Supp. 368 (E.D. La. 1967).

Range for minority group employment until Dec. 31, 1970—Continued

[Percent]

Steamfitters	4-8
Sheetmetal workers	4-8
Electrical workers	4-8
Elevator construction workers	4-8

Range of minority group employment for the calendar year 1971²

[Percent]

Identification of trade:

Ironworkers	11-15
Plumbers and pipefitters	10-14
Steamfitters	11-15
Sheetmetal workers	9-13
Electrical workers	9-13
Elevator construction workers	9-13

¹ The percentage figures have been rounded.

² After December 31, 1970 the standards set forth herein shall be reviewed to determine whether the projections on which these ranges are based adequately reflect the construction labor market situation at that time. Reductions or other significant fluctuations in federally involved construction shall be specifically reviewed from time-to-time as to their effect upon the practicality of the standards. In no event, however, shall the standards be increased for contracts after bids have been received.

Range of minority group employment for the calendar year 1972

[Percent]

Identification of trade:

Ironworkers	16-20
Plumbers and pipefitters	15-19
Steamfitters	15-19
Sheetmetal workers	14-18
Electrical workers	14-18
Elevator construction workers	14-18

Range of minority group employment for the calendar year 1973

[Percent]

Identification of trade:

Ironworkers	22-26
Plumbers and pipefitters	20-24
Steamfitters	20-24
Sheetmetal workers	19-23
Electrical workers	19-23
Elevator construction workers	19-23

The above ranges are expressed in terms of man hours to be worked on the project by minority personnel and must be substantially uniform throughout the entire length of the project for each of the designated trades.

Further ordered: That the form attached hereto as an Appendix is hereby made a part of this Order and in accordance with the findings specified above, amends the Appendix of the Order of June 27, 1969.

Each Federal agency shall include, or require the applicant to include, this form, or one substantially similar, in the invitation for bids or other solicitations used for a Federally-involved construction contract where the estimated total cost of the construction project exceeds \$500,000.

5. CRITERIA FOR MEASURING GOOD FAITH

Section 8 of the June 27 Order provides that a contractor will be given an opportunity to demonstrate that he has made every good faith effort to meet his goal of minority manpower utilization in the event he fails to meet such goal. If the contractor has failed to meet his goal, a determination of "good faith" will be based upon his efforts to broaden his recruitment base through at least the following activities:

(a) The OFCC Area Coordinator will maintain a list of community organizations which has agreed to assist any contractor in achieving his goal of minority manpower utilization by referring minority workers for employment in the specified trades. A contractor who has not met his goals may exhibit evidence that he has notified such

community organizations of opportunities for employment with him on the project for which he submitted such goals as well as evidence of their response.

(b) Any contractor who has not met his goal may show that he has maintained a file in which he has recorded the name and address of each minority worker referred to him and specifically what action was taken with respect to each such referred worker. If such worker was not sent to the union hiring hall for referral or if such worker was not employed by the contractor, the contractor's file should document this and the reasons therefor.

(c) A contractor should promptly notify the OFCC Area Coordinator in order for him to take appropriate action whenever the union with whom the contractor has a collective bargaining agreement has not referred to the contractor a minority worker sent by the contractor or the contractor has other information that the union referral process has impeded him in his efforts to meet his goal.

(d) The contractor should be able to demonstrate that he has participated in and availed himself of training programs in the area, especially those funded by this Department referred to in Section 3(c) of this Order, designed to provide trained craftsmen in the specified trades.

6. SUBCONTRACTORS

Whenever a prime contractor subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he shall include his goals in such subcontract and those goals shall become the goals of his subcontractor who shall be bound by them and by this Order to the full extent as if he were the prime contractor. The prime contractor shall not be accountable for the failure of his subcontractor to meet such goals or to make every good faith effort to meet them. However, the prime contractor shall give notice to the Area Coordinator of the Office of Federal Contract Compliance of the Department of Labor of any refusal or failure of any subcontractor to fulfill his obligations under this Order. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

7. EXEMPTIONS

a. Requests for exemptions from this Order must be made in writing, with justification, to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210, and shall be forwarded through and with the endorsement of the agency head.

b. The procedures set forth in the Order shall not apply to any contract when the head of the contracting or administering agency determines that such contract is essential to the national security and that its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within thirty days.

c. Nothing in this Order shall be interpreted to diminish the present contract compliance review and complaint programs.

8. EFFECT OF THIS ORDER

In the case of any inconsistency between this Order and the June 27, 1969 Order prescribing a "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction", this Order shall prevail.

9. AUTHORITY

This Order is issued pursuant to Executive Order 11246 (30 F.R. 12319, September 28,

1965) Parts II and III; Executive Order 11375 (32 F.R. 14303, Oct. 17, 1967); and 41 CFR Chapter 60.

10. EFFECTIVE DATE

The provisions of this Order will be effective with respect to transactions for which the invitations for bids or other solicitations for bids are sent on or after _____, 1969.

APPENDIX

(For inclusion in the Invitation or Other Solicitation for Bids for a Federally-Involved Construction Contract When the Estimated Total Cost of the Construction Project Exceeds \$500,000.)

NOTICE OF REQUIREMENT FOR SUBMISSION OF AFFIRMATIVE ACTION PLAN TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. It has been determined that in the performance of this contract an acceptable affirmative action program for the trades specified below will result in minority manpower utilization within the ranges set forth next to each trade:

Range of minority group employment until December 31, 1970

[Percent]

Identification of trade:	
Ironworkers	5-9
Plumbers and pipefitters.....	5-8
Steamfitters	5-8
Sheetmetal workers.....	4-8
Electrical workers.....	4-8
Elevator construction workers.....	4-8

Range of minority group employment for the calendar year 1971

[Percent]

Identification of trade:	
Ironworkers	11-15
Plumbers and pipefitters.....	10-14
Steamfitters	11-15
Sheetmetal workers.....	9-13
Electric workers.....	9-13
Elevator construction workers.....	9-13

Range of minority group employment for the calendar year 1972

[Percent]

Identification of trade:	
Ironworkers	16-20
Plumbers and pipefitters.....	15-19
Steamfitters	15-19
Sheetmetal workers.....	14-18
Electrical workers.....	14-18
Elevator construction workers.....	14-18

Range of minority group employment for the calendar year 1973

[Percent]

Identification of trade:	
Ironworkers	22-26
Plumbers and pipefitters.....	20-24
Steamfitters	20-24
Sheetmetal workers.....	19-23
Electrical workers.....	19-23
Elevator construction workers.....	19-23

2. The bidder shall submit, in the form specified below, with his bid an affirmative action program setting forth his goals as to minority manpower utilization in the performance of the contract in the trades specified below, whether or not the work is subcontracted.

The bidder submits the following goals of minority manpower utilization to be achieved during the performance of the contract:

Identification of trade	Estimated total employment for the trade on the contract until Dec. 31, 1970	Number of minority group employees until Dec. 31, 1970
Ironworkers.....		
Plumbers and pipefitters.....		
Steamfitters.....		
Sheetmetal workers.....		
Electrical workers.....		
Elevator construction workers.....		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1971	Number of minority group employees for the calendar year 1971
Ironworkers.....		
Plumbers and pipefitters.....		
Steamfitters.....		
Sheetmetal workers.....		
Electrical workers.....		
Elevator construction workers.....		

Ironworkers.....		
Plumbers and pipefitters.....		
Steamfitters.....		
Sheetmetal workers.....		
Electrical workers.....		
Elevator construction workers.....		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1972	Number of minority group employees for the calendar year 1972
Ironworkers.....		
Plumbers and pipefitters.....		
Steamfitters.....		
Sheetmetal workers.....		
Electrical workers.....		
Elevator construction workers.....		

Ironworkers.....		
Plumbers and pipefitters.....		
Steamfitters.....		
Sheetmetal workers.....		
Electrical workers.....		
Elevator construction workers.....		

Identification of trade	Estimated total employment for the trade on the contract for the calendar year 1973	Number of minority group employees for the calendar year 1973
Ironworkers.....		
Plumbers and pipefitters.....		
Steamfitters.....		
Sheetmetal workers.....		
Electrical workers.....		
Elevator construction workers.....		

Ironworkers.....		
Plumbers and pipefitters.....		
Steamfitters.....		
Sheetmetal workers.....		
Electrical workers.....		
Elevator construction workers.....		

(The bidder shall insert his goal of minority manpower utilization next to the name of each trade listed for those years during which it is contemplated that he shall perform any work or engage in any activity under the contract.)

3. The bidder also submits that whenever he subcontracts a portion of the work in the trade on which his goals of minority manpower utilization are predicated, he shall include his goals in such subcontract and those goals shall become the goals of his subcontractor who shall be bound by them to the full extent as if he were the prime contractor. The prime contractor shall not be accountable for the failure of his subcontractors to meet such goals or to make every good faith effort to meet them. However, the prime contractor shall give notice to the Area Coordinator of the Office of Federal Contract Compliance of the Department of Labor of any refusal or failure of any subcontractor to fulfill his obligations under this Order. Failure of the subcontractor to achieve his goal will be treated in the same manner as such failure by the prime contractor prescribed in Section 8 of the Order from the Office of Federal Contract Compliance to the Heads of All Agencies regarding the Revised Philadelphia Plan, dated June 27, 1969.

4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth in paragraph 1 above, provided, however, that participation by the bidder in multi-employer programs approved by the Office of Federal Contract Compliance will be accepted as satisfying the requirements of this Notice in lieu of submission of goals with respect to the trades covered by such multi-employer program. In the event that such multi-employer program is applicable, the bidder need not set forth goals in paragraph 2 above for the trades covered by the program.

5. For the purpose of this Notice, the term minority means Negro, Oriental, American Indian and Spanish Surnamed American. Spanish Surnamed American includes all

persons of Mexican, Puerto Rican, Cuban or Spanish origin or ancestry.

6. The purpose of the contractor's commitment to specific goals as to minority manpower utilization is to meet his affirmative action obligations under the equal opportunity clause of the contract. This commitment is not intended and shall not be used to discriminate against any qualified applicant or employee. Whenever it comes to the bidder's attention that the goals are being used in a discriminatory manner, he must report it to the Area Coordinator of the Office of Federal Contract Compliance of the U.S. Department of Labor in order that appropriate sanction proceedings may be instituted.

7. Nothing contained in this Notice shall relieve the contractor from compliance with the provisions of Executive Order 11246 and the Equal Opportunity Clause of the contract with respect to matters not covered in this Notice, such as equal opportunity in employment in trades not specified in this Notice.

8. The bidder agrees to keep such records and to file such reports relating to the provisions of this Order as shall be required by the contracting or administering agency.

OPPORTUNITY

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102. The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103. The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

SUBPART A—DUTIES OF THE SECRETARY OF LABOR

SEC. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

SUBPART B—CONTRACTORS' AGREEMENTS

SEC. 203. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to

Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest, so require, exempt a con-

tracting agency from the requirement of including any or all of the provisions of Section, also exempt certain classes of contracts, tract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases,

notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a) (6) shall be made without affording the contractor an opportunity for a hearing.

SUBPART D—SANCTIONS AND PENALTIES

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modification of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a) (2) of this Section, or before a contract shall be cancelled or terminated in whole or

in part under Subsection (a) (5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SEC. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209(a) (6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

SUBPART E—CERTIFICATES OF MERIT

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by

the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate

to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

PART IV—MISCELLANEOUS

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

LYNDON B. JOHNSON.

THE WHITE HOUSE, September 24, 1965.

EXECUTIVE ORDER 11375—AMENDING EXECUTIVE ORDER NO. 11246, RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246¹ of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment

under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

Now, therefore, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(1) Section 101 of Part I, concerning non-discrimination in Government employment, is revised to read as follows:

"SEC. 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

(2) Section 104 of Part I is revised to read as follows:

"SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission."

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin."

(4) Section 203 (d) of Part II is revised to read as follows:

"(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and

¹ 30 F.R. 12319; 3 CFR, 1964-1965 Comp., p. 339.

conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

LYNDON B. JOHNSON.

THE WHITE HOUSE, October 13, 1967.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. BIBLE), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), and the Senator from Ohio (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. BIBLE), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), and the Senator from Ohio (Mr. YOUNG) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Tennessee (Mr. BAKER), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from New Jersey (Mr. CASE), the Senator from Arizona (Mr. FANNIN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from New York (Mr. GOODELL), the Senator from Illinois (Mr. SMITH), and the Senator from Kansas (Mr. PEARSON) are detained on official business.

If present and voting, the Senator from Illinois (Mr. PERCY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 74, nays 0, as follows:

[No. 265 Leg.]

YEAS—74

Aiken	Gravel	Montoya
Allen	Griffin	Moss
Allott	Gurney	Murphy
Bayh	Hansen	Muskie
Bellmon	Harris	Pastore
Bennett	Hart	Pell
Boggs	Hartke	Prouty
Brooke	Hatfield	Proxmire
Burdick	Holland	Randolph
Byrd, Va.	Hruska	Ribicoff
Byrd, W. Va.	Hughes	Saxbe
Cannon	Jackson	Schweiker
Church	Javits	Scott
Cook	Jordan, N.C.	Smith, Maine
Cotton	Jordan, Idaho	Sparkman
Cranston	Kennedy	Spong
Curtis	Long	Stennis
Dodd	Magnuson	Stevens
Dole	Mansfield	Talmadge
Dominick	Mathias	Thurmond
Eagleton	McClellan	Williams, N.J.
Ellender	McGovern	Williams, Del.
Ervin	Metcalf	Yarborough
Fong	Miller	Young, N. Dak.
Gore	Mondale	

NAYS—0

NOT VOTING—26

Anderson	Goodell	Pearson
Baker	Hollings	Percy
Bible	Inouye	Russell
Case	McCarthy	Smith, Ill.
Cooper	McGee	Symington
Eastland	McIntyre	Tower
Fannin	Mundt	Tydings
Fulbright	Nelson	Young, Ohio
Goldwater	Packwood	

So the bill (H.R. 15209) was passed.

Mr. GRIFFIN. Mr. President, I move to reconsider the vote by which the supplemental appropriation bill was passed.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD of West Virginia. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. BYRD of West Virginia, Mr. PASTORE, Mr. HOLLAND, Mr. ELLENDER, Mr. MCCLELLAN, Mr. MAGNUSON, Mr. STENNIS, Mr. YOUNG of North Dakota, Mrs. SMITH of Maine, Mr. HRUSKA, and Mr. ALLOTT the conferees on the part of the Senate.

Mr. MANSFIELD. Mr. President, the overwhelming approval of this measure by the Senate speaks better than any words of praise for this magnificent achievement of the distinguished Senator from West Virginia (Mr. BYRD). Having assumed the chairmanship of the Subcommittee on Deficiencies and Supplementals just this year, Senator BYRD rose quickly to the task making certain that all phases of Government activity are—in the final analysis—being properly and adequately funded. It is a difficult task; one that requires the highest degree of care and diligence. Surely no Member of this body exceeds Senator BYRD in those capacities. The Senate is deeply grateful.

The Senate is grateful as well to the able and distinguished Senator from Nebraska (Mr. HRUSKA) for his outstanding cooperation and support. As the ranking minority member of the subcommittee, he applied the full measure

of his efforts to assure the expeditious and efficient disposition of this funding proposal.

To the many other Senators joining the discussion I wish to pay particular tribute. So to Senator JAVITS, to Senator GRIFFIN, to Senator BAKER, Senator ERVIN, Senator HOLLAND and the many others I extend the commendation of the Senate for their outstanding contributions to the discussion.

Mr. YARBOROUGH. Mr. President, I was unfortunately called away from the Chamber at the time of the vote on the amendment of the distinguished Senator from Oklahoma adding \$2 million to this bill for medical care for the Indians. I desire that the RECORD show that, had I been present, I would have voted "yea" on that amendment.

Mr. BYRD of West Virginia. Mr. President, I wish to take just a brief moment to express appreciation to the members of the staff of the Appropriations Committee for the exemplary work which they have performed in bringing this bill to the floor; and I want to say that I should not have done the poor job that I was able to do without their assistance.

So often their work is overlooked, and I think we ought to recognize the work that was done by the very, very able staff of the Appropriations Committee. Special praise perhaps is due Mr. Tom Scott and Mr. Joe T. McDonnell. So to them and the others I extend my gratitude.

I also want to express appreciation to the ranking minority member (Mr. HRUSKA) for the fine support he gave all along the way, and to the various Members who conducted hearings because of the fact that I had to be on the floor, and was unable to attend and conduct the hearings myself at times. I thank the other members of the subcommittee for their forbearance, patience, and assistance in this regard.

Mr. President, I thank all Senators for the patience they have shown, and for the fine spirit in which they have conducted the debate on this difficult measure. I think it has been a good day for the Republic.

Mr. GRIFFIN. Mr. President, particularly because the Senator from West Virginia has described his participation and leadership in connection with this bill in a very modest way, I would not want the record not to reflect that Senators on both sides of the aisle have commented about the excellent job that the Senator from West Virginia has done in chairing and providing leadership in connection with this bill. I think the record should show that the whole Senate is indebted to him.

Mr. BYRD of West Virginia. Mr. President, I thank the Senator. He is very gracious; I am extremely grateful.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

PAN AMERICAN RAILWAYS CONGRESS ASSOCIATION

A letter from the Acting Assistant Secretary for Congressional Relations, Depart-

ment of State, transmitting a draft amendment to the joint resolution providing for membership and participation by the United States in the Pan American Railways Congress Association (with accompanying papers); to the Committee on Foreign Relations.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on opportunities for more effective use of an automated procurement system for small purchases, Department of the Navy, dated December 17, 1969 (with an accompanying report); to the Committee on Government Operations.

REPORT ON DISPOSITION OF FOREIGN EXCESS PERSONAL PROPERTY

A letter from the Assistant Secretary of Defense, transmitting, pursuant to law, a report relative to the Department's disposition of foreign excess personal property located in areas outside of the United States, Puerto Rico and the Virgin Islands (with an accompanying report); to the Committee on Government Operations.

MIDDLE RIO GRANDE PROJECT, NEW MEXICO

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, their determinations relating to deferment of the February 1 and August 1, 1970, construction payments due the United States from the Middle Rio Grande Conservancy District, Middle Rio Grande Project, New Mexico; to the Committee on Interior and Insular Affairs.

FINANCIAL REPORT OF VETERANS OF WORLD WAR I OF THE U.S.A., INC.

A letter from the National Quartermaster-Adjutant, Veterans of World War I of the U.S.A., Inc., transmitting, pursuant to law, a financial report as of September 30, 1969 (with an accompanying report); to the Committee on the Judiciary.

DISPOSITION OF EXECUTIVE PAPERS

A letter from the Archivist of the United States, transmitting, pursuant to law, a list of papers and documents on the files of several departments and agencies of the Government which are not needed in the conduct of business and have no permanent value or historical interest and requesting action looking to their disposition (with accompanying papers); to a Joint Committee on the Disposition of Papers in the Executive Departments.

The ACTING PRESIDENT pro tempore appointed Mr. McGEE and Mr. FONG members of the committee on the part of the Senate.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A letter, in the nature of a petition, from Mary C. Gordon, of Utica, N.Y., praying for the enactment of legislation to extend the Voting Rights Act of 1965; to the Committee on the Judiciary.

HOUSE BILL REFERRED

The bill (H.R. 15095) to amend the Social Security Act to provide a 15-percent across-the-board increase in benefits under the old-age, survivors, and disability insurance program, was read twice by its title and referred to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. YARBOROUGH, from the Committee on Labor and Public Welfare, with amendments:

S. 2660. A bill to extend and otherwise amend certain expiring provisions of the Public Health Service Act for migrant health services (Rept. No. 91-618).

By Mr. HARTKE, from the Committee on Commerce, with amendments:

S. 1933. A bill providing for Federal railroad safety (Rept. No. 91-619).

By Mr. TYDINGS, from the Committee on the District of Columbia, with an amendment:

S. 2981. A bill to revise the laws of the District of Columbia on juvenile court proceedings (Rept. No. 91-620).

By Mr. JAVITS, from the Committee on Government Operations, without amendment:

H.J. Res. 764. A joint resolution to authorize appropriations for expenses of the President's Council on Youth Opportunity (Rept. No. 91-621).

BILLS INTRODUCED

Bills were introduced read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. STEVENS:

S. 3254. A bill to amend title 5, United States Code, in order to establish certain requirements with respect to air traffic controllers; to the Committee on Post Office and Civil Service, by unanimous consent.

(The remarks of Mr. STEVENS when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. HATFIELD:

S. 3255. A bill to amend the Federal Aviation Act of 1958 to require the Secretary of Transportation to prescribe regulations under which air carriers will be required to reserve a section of each passenger-carrying aircraft for passengers who desire to smoke; to the Committee on Commerce.

(The remarks of Mr. HATFIELD when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. EAGLETON:

S. 3256. A bill for the relief of Dr. Pacelli Escondo Brion; and

S. 3257. A bill for the relief of Maria Badalamenti; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 3258. A bill to confer jurisdiction on the United States District Court for the District of Alaska to hear and determine the claim of the State of Alaska for a refund of a sum paid to the United States for firefighting services; to the Committee on the Judiciary.

(The remarks of Mr. STEVENS when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. KENNEDY (for himself, Mr.

BROOKE, Mr. COTTON, Mr. MCINTYRE, Mr. DODD, and Mr. RIBICOFF):

S. 3259. A bill to authorize the Secretary of the Interior to establish the Bunker Hill National Historic Site in the city of Boston, Mass., and for other purposes; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. KENNEDY when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. CASE:

S. 3260. A bill to make it a criminal offense to travel in interstate commerce to avoid service of process or appearing before a crime investigation agency; to the Committee on the Judiciary.

By Mr. BURDICK:

S. 3261. A bill to amend title 18 of the United States Code to authorize the Attorney

General to admit to residential community treatment centers persons who are placed on probation, released on parole, or mandatorily released; to the Committee on the Judiciary.

S. 3254—INTRODUCTION OF AIR TRAFFIC CONTROLLERS BILL

Mr. STEVENS. Mr. President, the problems besetting air traffic control and the hard working men who man the air traffic control facilities have been brought to light in the many newspaper and magazine articles on the subject that have recently appeared. The Senate Post Office and Civil Service has held hearings on the proposed early retirement of air traffic controllers, and other bills dealing with the problem of air traffic control have been introduced.

Today, I am introducing at the request of the Anchorage professional air traffic controller employee organization a bill which was drafted by a representative of the air traffic controller of my State.

The bill provides for the formal classification of air traffic controllers into four groups based on training and experience and provides for compensation according to these classifications. It separates management and administrative tasks from air traffic control functions and provides that air traffic controllers shall not be burdened with tasks not directly related to the control of aircraft. Flight familiarization would be required of all air traffic controllers under this bill to assure that the men who control the planes are familiar with the conditions on board the aircraft they are controlling. The bill provides for premium pay and early retirement for controllers in high density facilities.

I am happy to have the opportunity to introduce this bill because it contains provisions drafted on behalf of air traffic controllers and is designed to provide the administration of the air traffic control program that the men who work in it would like to have. I think it is important for the Senate to have the opportunity to examine a bill which is a reflection of the desires of the men whom the bill is designed to assist.

I ask unanimous consent that the bill be referred to the Committee on Post Office and Civil Service, and that the bill be printed in the RECORD.

The PRESIDING OFFICER. The bill will be received and, without objection, the bill will be referred to the Committee on Post Office; and, without objection, the bill will be printed in the RECORD.

The bill (S. 3254) to amend title 5, United States Code, in order to establish certain requirements with respect to air traffic controllers, introduced by Mr. STEVENS, was received, read twice by its title, referred to the Committee on Post Office and Civil Service, by unanimous consent, and ordered to be printed in the RECORD, as follows:

A bill to amend title 5, United States Code, in order to establish certain requirements with respect to air traffic controllers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part III of title 5, United States Code, is

the plan of most of the House Managers that the Director would be directed to retain, rather than delegate, this new authority.

They did not insist, however, that he do so; but they do insist that these programs and other manpower and job programs be carried on as originally conceived and designed by the Congress, that there be no reduction in their magnitude, that recent limitations on eligibility (such as those dealing with older workers) be removed, that the "New Careers" program retain real substance and not be limited to public service activities, that substantive efforts such as those going on at the University of Minnesota be encouraged to improve and continue. In short, the managers on the part of the House will insist that the policies and purposes enunciated by the Congress be adhered to. It is their expectation that under this part special emphasis will be placed on single purpose programs, that programs of limited size and scope will be carried out, especially in rural areas, and that the rural poverty areas will receive an equitable share of the assistance being provided. The Director and/or his delegate administrator of this part will be expected to report to the committee on the policies and progress of these programs bi-annually beginning six months after the enactment of this Act. The Managers on the part of the House reemphasize and redirect the attention of the Secretary of Labor to the language on page 7 of the House Report (91-684) dealing with manpower programs.

EMERGENCY FOOD AND MEDICAL SERVICES

The House amendment contained a provision, which had no counterpart in the Senate bill, which added a new title X to the Act under which the Director would carry out intensive programs to eliminate hunger and malnutrition. The amendment also repealed the authority in the existing law which provides for an emergency food and medical service program as a special emphasis program to be carried out under section 222(a). The amendment authorized the appropriation of \$92,000,000 for the fiscal year 1970 and such amounts as may be necessary for fiscal year 1971 for carrying out this new program. The conference substitute does not contain all of the provisions of the House amendment, but instead substitutes for the existing authority in section 222(a) for carrying out emergency food and medical services the substantive language contained in the House provision, with a minor amendment to assure that the services will be provided only on an emergency basis. The substitute also deletes the requirement in the House amendment that particular emphasis be given to programs which serve the elderly and the extremely young. The conferees wish to emphasize their desire that the Director should encourage the employment of elderly persons as regular, part time, and short-term staff in programs carried on under this paragraph.

AMENDMENT OF RURAL LOAN PROGRAM

The House amendment made an amendment to the provisions of the Act governing the rural loan program. This provision, which had no counterpart in the Senate bill, is retained in the conference report. The managers on the part of the House expect that, with the adoption of this amendment, the Farmers Home Administration will consider applications for loans under this Part to elderly people for the purpose of making repairs and improvements to their homes.

APPLICABILITY TO THE TRUST TERRITORY

The House amendment contained a provision, which did not appear in the Senate bill, to ensure that the benefits of titles III-A and IV of the Act are available in the Trust Territory of the Pacific Islands. The Senate recedes.

ADVANCE FUNDING

The Senate bill provided that appropriations for grants, contracts, or other payments

under the Act are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation. This provision authorizing advance funding had no counterpart in the House amendment. The advance funding provision is retained in the conference substitute.

TIME OF OBLIGATION OF APPROPRIATIONS

The Senate bill provided that funds to cover a contract, agreement, grant, loan, or other assistance shall be treated as obligated at the time the plan is approved by the Office of Economic Opportunity and submitted to the Governor for consideration as required by section 242 of the Act, and also ratifies past practices of the Office of Economic Opportunity which is in accord with this provision. While the House amendment did not contain this provision, the House committee in its report recognized the problem and approved the practice, and the managers on the part of the House agree that it should be included in the conference substitute.

CREDITING SERVICE OF A VISTA VOLUNTEER

The Senate bill provided that service as a VISTA volunteer would be credited as if it were Federal service for purposes of determining retirement benefits under Federal law. The House amendment did not contain this provision. The House recedes.

AUDIT REQUIREMENT

The Senate bill provided that the Comptroller General shall have access "for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to the financial assistance received by any agency under this title." The House amendment did not contain this provision. The Senate recedes.

USE OF CLOSED JOB CORPS CENTERS FOR SPECIAL YOUTH PROGRAMS

The Senate bill provided that facilities and equipment of the closed Job Corps centers will, where feasible, be made available for use by State or Federal agencies and other public or private agencies, institutions, and organizations, for conducting programs, especially programs providing opportunities for low-income disadvantaged youth. The House amendment did not contain this provision. The House recedes.

AMENDMENT WITH RESPECT TO WITHHOLDING CERTAIN FEDERAL TAXES BY ANTIPOVERTY AGENCIES

The Senate bill provided that, upon receipt of assistance under the Act, the recipient must set aside a portion of the amount received sufficient to satisfy expected liability under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act. It also provided that, upon notice from the Secretary of the Treasury, when any person otherwise entitled to receive funds under the Act is delinquent in paying these taxes, or in depositing withheld income or social security taxes, the Director must suspend payments and provide no further assistance, until the Secretary of the Treasury notifies him that the recipient is no longer delinquent or that adequate provision for payment has been made. The House amendment did not contain this provision. The conference substitute makes major changes in this provision. It does not include the requirement that recipients of assistance under the Act must set aside the amount necessary to satisfy its expected liabilities for taxes under the Acts referred to above. It also provides that when a delinquency occurs the Office of Economic Opportunity, instead of suspending all further assistance, will suspend only so much of the assistance as may be necessary to satisfy the delinquency. Further, it provides that new assistance may be given when the Director determines that adequate provision has been made for paying any delinquency which is outstanding. The conference substitute in-

cludes a further provision which states that in order to effectuate the purposes of the section on a reasonable basis, the Secretary of the Treasury and the Director of the Office of Economic Opportunity must consult on a quarterly basis.

AUTHORIZATION OF APPROPRIATIONS

The Senate bill provided authorizations of appropriations for the fiscal year 1970 of \$2,048,000,000. The House amendment in contrast authorized the appropriation for fiscal year 1970 of \$2,343,000,000, of which \$1,563,000,000 was authorized for carrying on programs for which the House did not make separate authorization of appropriations. The bill agreed to in conference authorizes the appropriation of \$2,195,500,000 for the fiscal year 1970.

For the fiscal year 1971, the House amendment authorized the appropriation of such sums as may be necessary. The Senate bill authorized the appropriation for that year of \$2,148,000,000, but, in addition, authorized the appropriation of the following:

- (1) \$14,000,000 for Special Impact programs under part D of title I,
- (2) \$240,000,000 for Project Headstart programs,
- (3) \$32,000,000 for Legal Services programs,
- (4) \$80,000,000 for Comprehensive Health Services programs,
- (5) \$150,000,000 for Emergency Food and Medical Services programs,
- (6) \$3,200,000 for the Senior Opportunities and Services programs,
- (7) \$15,000,000 for assistance for migrant and seasonal farm workers under part B of title III, and
- (8) \$50,000,000 for Day Care projects under part B of title V.

The conference substitute authorizes \$2,295,500,000 for the fiscal year 1971 and authorizes the additional amounts which were authorized by the Senate bill with the following exceptions: (1) an additional authorization of \$15,000,000 for family planning programs; (2) the additional amount for Headstart is reduced to \$180,000,000; (3) the additional amount for Emergency Food and Medical Services is reduced to \$112,500,000.

ALLOCATIONS

The House amendment did not provide allocations to specific programs of amounts appropriated, except to the extent the separate authorizations contained in the House amendment for special work and career development programs, special preschool and Follow Through programs, and intensive programs to eliminate hunger and malnutrition constituted a separate allocation of appropriations.

The Senate bill in contrast provided special allocations for a number of the programs carried on under the Act. These were the following:

- (1) \$890,300,000 for work and training programs under title I.
- (2) \$46,000,000 for special impact programs under part D of title I.
- (3) \$1,012,700,000 for community action programs under title II, of which \$338,000,000 would be for Project Headstart programs, \$60,000,000 for Follow Through programs, \$58,000,000 for legal services programs, \$80,000,000 for comprehensive health services programs, \$25,000,000 for emergency food and medical services programs, \$15,000,000 for family planning programs, and \$3,800,000 for senior opportunities and services programs.
- (4) \$12,000,000 for rural loan programs,
- (5) \$34,000,000 for migrant and seasonal farm worker programs,
- (6) \$16,000,000 for administration and coordination under title VI,
- (7) \$37,000,000 for carrying out VISTA.

The conference substitute adopts the plan of the Senate bill with a major change. As adopted by the conferees, \$328,900,000 must be reserved and made available for each of the fiscal years for local initiative programs

carried on under section 221 of the Act, and only the remainder of the appropriations for each such year would be allocated in the prescribed manner. The amount so reserved is not subject to transfer under Section 616 of the Act. The allocations described above are retained in the conference substitute, except that a new allocation of \$20,000,000 is made for carrying out the new part E of the Act. It should be noted that the provisions of the Senate bill requiring pro rata reductions in allocations where appropriations are insufficient to make such allocations in full are retained in the conference substitute, but, of course, the funds reserved for local initiative programs would not be subject to such reductions. It should also be noted in considering these allocations that the conference substitute retains the provisions of the Senate bill which require the Director to reserve and make available not less than \$10,000,000 for the fiscal year 1970 and not less than \$15,000,000 for the fiscal year 1971 for carrying out the new Alcoholic Counseling and Recovery program and to reserve and make available not less than \$5,000,000 for the fiscal year 1970, and not less than \$15,000,000 for the fiscal year 1971 for carrying out the new Drug Rehabilitation program.

TRANSFERS

Section 616 of the Act authorizes 10 percent of the amount appropriated or allocated from any appropriation for carrying out any program or activity under the Act to be transferred and used for carrying out any other program or activity under the Act, but no such transfer can result in increasing the amount otherwise available for any program or activity by more than 10 percent. The Senate bill amended this provision to permit the transfer of 15 percent of the amount appropriated or allocated for a program or activity for the fiscal year 1970 and 20 percent thereafter. It also deleted the provision which limits the amount which may be transferred to any program or activity. The conference substitute modified the Senate language to provide that no more than 10 percent of the funds appropriated or allocated for one program or activity may be transferred to another program or activity during fiscal 1970 and no more than 15 percent may be so transferred thereafter. With respect to the limitations on the transfers resulting in increases in the amounts available for any program or activity, the conferees agree that for activities or programs for which \$10,000,000 or less is available a maximum of 100 percent could be added. For any program or activity for which more than \$10,000,000 was available no more than 35 percent may be added.

It should be noted that in at least two respects the agreement of the conferees underscores the overwhelming determination by the House of Representatives on Friday the twelfth of December that title II and the programs authorized thereunder are and must remain Community Action Programs. The elimination of the Murphy amendment relating to the governor's veto power over legal services programs and the provision of a special reservation of funds for local initiative programs underscore the intention of the conferees that the community action program was, and is intended to be, a program locally designed and locally administered. The managers on the part of the House encourage the Director of OEO to explore, along the lines previously mentioned in the House committee report, the opportunities for increased State involvement in poverty programs. It must be quite clear, however, that State domination over program planning, conception, or administration is not intended. Any changes in policy or regulation that would establish a preference for State rather than local determination and

local control of community action programs will be inconsistent with the intention of the Congress.

CARL D. PERKINS,
ROMAN C. PUCINSKI,
JOHN BRADEMAS,
JAMES G. O'HARA,
HUGH L. CAREY,
AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
WILLIAM D. HATHAWAY,
PATSY T. MINK,
JAMES SCHEUER,
FLOYD MEEDS,
W. H. CLAY,
LOUIS STOKES,
OGDEN R. REID,
JOHN DELLENBACK,
MARVIN L. ESCH,
ALPHONZO BELL,
WILLIAM A. STEIGER,

Managers on the Part of the House.

APPOINTMENT OF CONFEREES ON H.R. 15209, SUPPLEMENTAL AP- PROPRIATIONS, 1970

Mr. MAHON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Messrs. MAHON, WHITTEN, ROONEY of New York, BOLAND, FLOOD, and STEED, Mrs. HANSEN of Washington, and Messrs. Bow, JONAS, CEDERBERG, and RHODES.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 15209, SUPPLE- MENTAL APPROPRIATIONS, 1970, UNTIL MIDNIGHT TOMORROW

Mr. MAHON. Mr. Speaker, I ask unanimous consent that the managers on the part of the House may have until midnight tomorrow night to file a conference report on H.R. 15209, making supplemental appropriations for fiscal year 1970, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 13111, DEPART- MENTS OF LABOR AND HEALTH, EDUCATION, AND WELFARE AP- PROPRIATIONS, 1970, UNTIL MID- NIGHT TOMORROW

Mr. MAHON. Mr. Speaker, on behalf of the gentleman from Pennsylvania (Mr. FLOOD) the chairman of the Subcommittee on Labor and Health, Education, and Welfare of the Committee on Appropriations, I ask unanimous consent that the managers on the part of the House may have until midnight tomorrow night to file a conference report on H.R. 13111, making appropriations for the Departments of Labor, and Health,

Education, and Welfare, and related agencies for the fiscal year ending June 30, 1970, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. GERALD R. FORD asked and was given permission to address the House for 1 minute.)

Mr. GERALD R. FORD. Mr. Speaker, I take this time for the purpose of asking the distinguished majority leader the program for tomorrow, if he is able to give us that now.

Mr. ALBERT. Mr. Speaker, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Oklahoma.

Mr. ALBERT. Mr. Speaker, we will not ask to go over, so we will meet at 12 o'clock tomorrow.

We have outstanding, as the gentleman knows, conference reports on three appropriation bills—for foreign aid, for Labor-HEW, and the supplemental—and on the following bills:

Economic Opportunity Act Amendments, Export Control, and Environmental Quality as well as the tax bill. Of course, we know we will not get the tax bill tomorrow, but we will take up as many as possible, hopefully all of these six conference reports, the three appropriation ones and the other three tomorrow, if they are ready tomorrow.

Mr. GERALD R. FORD. Mr. Speaker, I thank the gentleman from Oklahoma.

CORRECTION OF ROLL CALL

Mr. RARICK. Mr. Speaker on roll call No. 337, on December 18, a quorum call, I am recorded as absent. I was present and answered to my name. I ask unanimous consent that the Permanent Record and Journal be corrected accordingly.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

RESEARCH NEEDED ON MARIHUANA

The SPEAKER pro tempore (Mr. GIAIMO). Under a previous order of the House, the gentleman from Connecticut (Mr. MONAGAN) is recognized for 20 minutes.

Mr. MONAGAN. Mr. Speaker, I have recently urged the establishment of a commission to determine the character or marihuana and the effect of its use in order to provide a firm factual basis upon which to found decisions as to its regulation.

I have said that the facts are not completely known and this is true insofar as ultimate conclusions are concerned. However, there are a few undisputable facts and I should like to set them out here.

HOUSE December 19, 1969

1. CONSUMERS. Received from the Government Operations Committee a report "Government rejected consumer items (17th report)" (H. Rept. 91-773). p. H12837
2. QUARANTINE STATIONS. The Agriculture Committee reported with amendments H. R. 11832, to provide for the establishment of an international quarantine station and to permit the entry therein of animals from any other country and the subsequent movement of such animals into other parts of the U. S. for purposes of improving livestock (H. Rept. 91-776). p. H12837
3. POVERTY. Received the conference report on S. 3016, to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, to authorize advance funding of such programs (H. Rept. 91-778). pp. H12817-22
4. FOREIGN AID. Both Houses agreed, (House, 208-166) to the conference report on H. R. 14580, the foreign aid authorization bill (pp. H12795-7, S17301-2). This bill will now be sent to the President.
Received the conference report on H. R. 15149, the foreign aid appropriation bill, 1970 (H. Rept. 91-779). pp. H12834-6
5. TAXATION. Granted until midnight Sunday, Dec. 21, to file a conference report on H. R. 13270, the tax reform bill of 1969. pp. H12791-3
6. MILITARY CONSTRUCTION. Agreed to the conference report on H. R. 14751, the military construction appropriation bill for the Department of Defense for fiscal year 1970. pp. H12793-5
7. TRANSPORTATION. Agreed to the conference report on H. R. 14794, Department of Transportation and related agencies appropriation bill, 1970. pp. H12797-8
8. SUPERGRADES; PERSONNEL. Passed as reported S. 2325, to amend title 5, U. S. Code, to provide for additional positions in grades GS-16, GS-17, and GS-18. pp. H12798-12800
9. MORTGAGE CREDIT. Both Houses agreed (House, 358-4) to the conference report on S. 2577, to provide additional mortgage credit (pp. S17299-301, H12812-17). This bill will now be sent to the President.
10. SUPPLEMENTAL APPROPRIATION. Conferees were appointed on H. R. 15209, the supplemental appropriation bill, 1970 (p. H12822). Senate conferees have been appointed.
11. WATERSHEDS. Rep. Edwards, Ala., expressed hope the Administration will back the Tennessee-Tombigbee Waterway project. p. H12790
12. FOREIGN TRADE. Rep. Molloy called on the Congress in the next session to "carefully consider" our foreign trade commitments. p. H12807

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of Dec. ~~18 continued~~, 19, ~~8-20~~, 1969
91st-1st ~~No. 213~~ and No. 212

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HIGHLIGHTS: Both Houses agreed to conference report on foreign aid authorizations bill. Senate passed migrant workers health bill. House committee reported international quarantine station bill. House passed additional supergrades bill. Senate passed additional supergrades bill. Senate agreed to conference report on environmental quality bill. House received conference report on supplemental appropriations bill.

13. PESTICIDES. Rep. Monagan inserted his remarks on pesticide control.
p. H12810
14. BOAT SAFETY. Rep. Monagan inserted the "Sportsmen's Corner" column commenting
on his boating safety bill. pp. H12810-1

HOUSE - December 20, 1969

15. SUPPLEMENTAL APPROPRIATIONS. ~~Agreed to the~~ ^{Received the} conference report on H. R. 15209,
the supplemental appropriation bill, 1970 (H. Rept. 91-780). This bill
contains an item of \$3.7 million for Flood Prevention, Soil Conservation
Service, to cover damage caused by Hurricane Camille. pp. H12854-5
16. APPROPRIATIONS. Received the conference report on H. R. 13111, Labor, HEW
appropriation bill, 1970 (H. Rept. 91-781). pp. H12883-6
Agreed, 181-174, to the conference report on H. R. 15149, the foreign aid
appropriation bill, 1970. pp. H12840-52
243-94, to
17. POVERTY. The Senate agreed, 54-21, and the House agreed, /the conference
report on S. 3016, to provide for the continuation of programs authorized
under the Economic Opportunity Act of 1964, and to authorize funding of such
programs (pp. S17435-49, H12855-63). This bill will now be sent to the
President.
18. ENVIRONMENT. Rep. Hamilton spoke in support of legislation to restrain the
destruction and fouling of our environment. pp. H12863-73
19. LEGISLATIVE PROGRAM. The "Daily Digest" states that on Mon. the House will
consider conference reports on Labor-HEW appropriation bill and the tax
reform bill. p. D1241
20. ADJOURNED until Mon., Dec. 22, 1969. p. H12887

SENATE - December 18, 1969

21. FARM INCOME. Sen. Nelson submitted a proposed amendment S. 3068, to improve
farm income; the proposed amendment would prevent use of farm operations as
a tax shelter by individuals whose primary ~~source~~ of income is not from
farming. p. S17333
22. FARM COMMITTEES. Sen. Eagleton inserted the address of Sen. McGovern before
the national convention of the Association of Farmer-Elected Committeemen,
"American Agriculture in a Hungry World." pp. S17346-48
23. CONSERVATION. Sen. Dole noted the triumph of soil and water conservation in
Kansas and inserted a newspaper article. p. S. 17356
24. FOOD STAMP. Sen. Dole commented on the Secretary's announcement regarding the
substantial expansion of the Food Stamp program, stating that the action
"will put more food on the table of needy Americans." p. S17364

25. WHEAT. Sen. Dole inserted a newspaper article which reports that the 1967-68 wheat acreage allotment was the lowest in history and quotes the executive vice president of the National Wheat Growers Association as having said "that our dryland wheat producers are going broke." p. S17385
26. FARM PROGRAM. Sen. Dole inserted a newspaper article which examines" the aims and the details of the proposals that have been discussed with the House Agriculture Committee" and quotes Department spokesmen. pp. S17387-88

SENATE - December 19, 1969

27. APPROPRIATIONS. Agreed to conference report on H. R. 14794, Department of Transportation Appropriations for fiscal year 1970. This bill will now be sent to the President. p. S17323
Agreed to conference report on H. R. 14751, Military Construction appropriations for fiscal year 1970. This bill will now be sent to the President. p. S17310
28. FOREIGN AID. Agreed to the conference report on H. R. 14580, the foreign aid program authorizations. This bill will now be sent to the President. pp. S17301-02
29. MIGRANT HEALTH. Discharged H. R. 14733, the proposed Migrant Health Act, from committee and passed the bill with an amendment in the nature of a substitute to include language of S. 2660. p. S17320
30. MANPOWER DEVELOPMENT. Sen. Boggs submitted a proposed amendment to S. 2838, the proposed manpower training act of 1969, to insure that the Federal Government can and will provide financial support to the opportunities industrialization centers. p. S17255

SENATE - December 20, 1969

31. APPROPRIATIONS. Tabled the conference report on H. R. 15149, the foreign aid appropriations bill for fiscal year 1970; further conference with House requested and conferees appointed. pp. S17463-477
32. ENVIRONMENT. Agreed to the conference report on S. 1075, to provide for studies and research in connection with national policy on environmental quality. pp. S17450-17462
33. SUPERGRADES. Agreed to House amendment on S. 2325, to authorize the Civil Service Commission to establish additional supergrade positions. This bill will now be sent to the President. p. S17407
34. CORPORATION FARMING. The Select Committee on Small Business submitted a report entitled "Impact of Corporation Farming on Small Business," S. Rept. 91-628. p. S17408

SUPPLEMENTAL APPROPRIATIONS, 1970

DECEMBER 20, 1969.—Ordered to be printed

Mr. MAHON, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 15209]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15209) "making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 5, 7, 14, 22, and 25.

That the House recede from its disagreement to the amendments of the Senate numbered 11, 15, 17, 20, 21, 23, 30, and 31, and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$300,000; and the Senate agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$700,000; and the Senate agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *\$1,250,000*; and the Senate agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *\$310,000*; and the Senate agree to the same.

Amendment numbered 10:

That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *\$2,300,000*; and the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment insert *\$50,000*; and the Senate agree to the same.

Amendment numbered 16:

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment insert *\$2,048,000*; and the Senate agree to the same.

Amendment numbered 18:

That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment insert *\$1,000,000*; and the Senate agree to the same.

Amendment numbered 24:

That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *\$1,040,000*; and the Senate agree to the same.

Amendment numbered 26:

That the House recede from its disagreement to the amendment of the Senate numbered 26, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment insert *\$50,000*; and the Senate agree to the same.

Amendment numbered 28 :

That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment, as follows :

In lieu of the sum named in said amendment insert \$1,000,000 : and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 4, 8, 13, 19, 27, 29, 32, and 33.

GEORGE MAHON,
JAMIE L. WHITTEN,
JOHN J. ROONEY,
TOM STEED,
DANIEL J. FLOOD,
JULIA BUTLER HANSEN.
CHARLES R. JONAS,
E. A. CEDERBERG,
JOHN J. RHODES (except
amendment No. 32),

Managers on the Part of the House.

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STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

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Amendment No. 21: Appropriates \$24,966 for the Office of the Vice President as proposed by the Senate.

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Amendments Nos. 30 and 31: Appropriates \$25,021,852 for claims and judgments as proposed by the Senate instead of \$24,491,433 as proposed by the House.

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amendment No. 32),

Managers on the Part of the House.





This is the kind of skulduggery that has been practiced in this bill and I, for one, refuse to be hoodwinked.

Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

WORDS OF ADVICE FOR AND MERRY CHRISTMAS TO MR. GROSS OF IOWA

(Mr. PASSMAN asked and was given permission to address the House for 1 minute.)

Mr. PASSMAN. Mr. Speaker, I am very fond of the distinguished gentleman from Iowa.

I want to say to this fine American that he should do a better job on the committee on which he has the privilege of serving; namely, the Committee on Foreign Affairs, and do his work there, rather than to try to "cut me up" when I try to do a creditable job. If he did then I am sure we would get an authorization bill earlier, and we would not have this annual hassle over who precedes whom.

I recommend to this distinguished American, this distinguished Member of Congress, that he have a close look at the operations of his own committee. Then we would not get into these parliamentary involvements almost on Christmas Eve.

However, I do wish this fine American a Merry Christmas.

AUTHORIZING PRESIDENT TO PROCLAIM JANUARY 1970 AS "NATIONAL BLOOD DONOR MONTH"

Mr. ROGERS of Colorado. Mr. Speaker, I ask unanimous consent to take from the Speaker's Desk the Senate joint resolution (S.J. Res. 154) entitled "Joint resolution to authorize and request the President to proclaim the month of January of each year as 'National Blood Donor Month', with a Senate amendment to the House amendments thereto, and concur in the Senate amendment to the House amendments.

The Clerk read the title of the Senate joint resolution.

The Clerk read the Senate amendment to the House amendments, as follows:

Page 1, after line 7 of the Senate engrossed resolution, insert:

"Sec. 2. Notwithstanding any other provision of law, the citizenship or nationality of Erneido A. Oliva shall not prohibit the Secretary of the Senate from paying compensation, for a period not to exceed six months, to the said Erneido A. Oliva while serving as an employee of the Senate."

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

Mr. WIGGINS. Mr. Speaker, reserving the right to object, I take this reservation only for the purpose of asking my colleague from Colorado to explain the nature of the Senate amendment.

Mr. ROGERS of Colorado. The nature of the Senate amendment is to strengthen

out their own bookkeeping in connection with an employee who is employed by the Secretary of the Senate, to pay compensation for a period of 6 months.

Mr. WIGGINS. I thank the gentleman. Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

The Senate amendment to the House amendments was concurred in.

A motion to reconsider was laid on the table.

RECOMMENDATIONS OF THE CABINET TASK FORCE ON OIL IMPORT CONTROL

(Mr. MAHON asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. MAHON. Mr. Speaker, I have been very distressed by recent reports as to recommendations that apparently are being advanced by the President's Cabinet Task Force on Oil Import Control.

Apparently the plan is to force a reduction in the price of crude oil by increasing the level of imports.

Mr. Speaker, our country is already dependent on foreign sources for a sizable portion of our total oil requirements. Our national oil policy has recognized that a healthy and growing domestic oil industry is essential to national defense and to our national interests generally. Any action to make us further dependent on foreign sources threatens grave consequences.

The present import program has served the Nation well but even so discovery of new domestic reserves has not kept pace with increases in consumption. It is more important now than ever before that we have conditions which will promote exploration and development of the domestic oil industry.

The implementation of what appears to be the recommendations of the task force increasing imports and sharply reducing prices will hit hardest at the smaller independent producers. And, it should be kept clearly in mind that the independents are the most active in the field of oil exploration and have been responsible for the discovery of 85 percent of new reserves.

Mr. Speaker, irrecoverable losses would accrue to large segments of the domestic oil industry should the recommendations developed by the staff of the task force be implemented. Further, it seems to me that the underlying economic assumptions upon which the recommendations are apparently based are thoroughly unsound.

Mr. Speaker, I wish to document the views which I have expressed by placing in the RECORD a letter which was sent to President Nixon a short time ago by some 90 Members, including myself, on the subject of oil imports. I hope the letter will have the favorable attention of the President.

The letter follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 4, 1969.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: The undersigned wish to take this means of expressing to you our deep concern about the persistent reports indicating that the Cabinet Task Force on Oil Import Control may propose radical changes in the oil import program. Most disturbing are reports that the present level of imports will be increased and that this action is to be taken for the purpose of forcing a reduction in the price of crude oil.

It is our firm conviction that an increase in the present level of imports would seriously jeopardize our national security and constitute a disservice to the consumers of both oil and natural gas. In this regard, the following considerations appear to us to be conclusively persuasive.

1. Imports of crude oil and refined products now equal more than one third of total U.S. crude oil production. This already is a dangerous dependency, and under no circumstances should it be increased. For example, during the Middle East crisis of 1967, we were barely able to meet the emergency requirements for domestic oil, even for a short duration. Since that time, our petroleum reserve position has deteriorated. Last year, for the first time in our history, crude oil producing capacity declined. In contrast, authoritative forecasts show that our requirements by 1980 will be some 30 percent greater than at present.

2. The Eastern States, including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, West Virginia, Virginia, Maryland, North Carolina, South Carolina, Georgia, and Florida, are now dependent on foreign source petroleum for 40 percent of their requirements. Any further dependence of this important industrial area on uncertain foreign sources, which experience has indicated would be cut off in time of emergency, could result in critical shortages because domestic supplies and transportation facilities would no longer be available.

3. We already face a most critical natural gas supply problem. The Federal Power Commission and also officials in the Department of the Interior recently have publicly recognized the seriousness of the natural gas supply problem and have called for immediate remedial actions. Increased imports of oil would discourage and further depress the search for new gas fields and new oil fields—an inseparable activity.

4. All forms of energy are essential to national security. Increased oil imports adversely affect not only domestic supplies of oil and natural gas but also of coal and synthetics such as shale oil.

5. The use of low-cost imported oil appears at first glance to be attractive, and it might very well be so for the short term. But, to do so would put the Nation in a very vulnerable position for the long term. During the 1967 Middle East Crisis, we were the victims of an embargo. It is obvious from previous experience that foreign oil will be cheap only so long as we are not dependent upon it for our needs and security.

6. There have been claims made that the present Mandatory Oil Import Program costs consumers billions of dollars annually. These claims are totally misleading because they are based upon the fallacious assumption that Middle East oil will remain cheap even after we are dependent upon it. Furthermore, these claims disregard the losses to our

economy that would result from dismantling the domestic industry which generates billions of dollars annually in revenues to the economy and tax revenues throughout more than half our States which produce oil and gas.

7. Oil imports now constitute the largest commodity deficit item in our balance of trade, totalling \$2.6 billion annually. If the import level is increased, the serious balance of payments problem will be further aggravated.

8. The petroleum industry now markets more Btu's in the form of natural gas than in the form of liquid petroleum. The combined wellhead price of these two products on a crude oil equivalent basis, is less than \$1.90 per barrel. This is lower than the cost of imported oil or natural gas from any source of the world.

9. In 1957-59, the combined weighted wholesale price of the four principal petroleum products was \$3.99 a barrel. In the latest month, September, 1969, these weighted product prices averaged \$3.90. Prices of petroleum are therefore lower today than in the 1957-59 price, while the wholesale price level for all commodities is up almost 14 percent. If price behaviour of all other industries had been as favorable as the oil industry, there would be no problem of inflation today.

10. Recent discoveries in Alaska have been cited by some as providing security of supplies for the future. We think prudence requires caution as to (1) these preliminary but optimistic estimates of reserves and (2) the cost to consumers in the other 49 states. Furthermore, it should be kept in mind that our requirements are growing at a rapid rate; for example, during the past 10 years we found about 35 billion barrels of oil whereas during the next decade if we are to remain secure we must find about 60 billion barrels.

We are also very much concerned about the impact increased imports would have upon the economy of the oil producing states. The cost to the total U.S. economy would aggregate billions of dollars annually through reductions in state and local tax revenues; lower bonuses and rentals from Federal and state lands; losses in employment; and decreases in purchases of equipment, supplies and services from allied industries.

We wish to urge with all the persuasion and force at our command that in our opinion the Nation's security will be dangerously impaired if the level of imports is increased. We direct your attention particularly to the uncertain conditions in Libya and the Middle East which serve to remind us of the folly of becoming dependent upon these sources. In addition, we are firmly convinced that increased imports would bring about serious economic problems, including what we believe would be a crippling impact upon the already serious balance of payments problem.

Respectfully,

LEGISLATIVE PROGRAM FOR THE BALANCE OF THE DAY

(Mr. ALBERT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALBERT. Mr. Speaker, we hope to take up the conference report next on the OEO bill which I understand has just been voted on by the Senate but has not been messaged over here. Pending receipt of it, I ask unanimous consent that the Speaker may declare a recess at any time this afternoon subject to the call of the Chair and that the bells may be rung 15 minutes prior to our reconvening.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

Mr. WAGGONER. Mr. Speaker, reserving the right to object, and I will not object, may I ask is it the intention of the leadership not to call up any other conference report today except the OEO authorization bill?

Mr. ALBERT. None of the rest of them are ready. May I answer the gentleman in that way?

Mr. WAGGONER. Mr. Speaker, I withdraw my reservation of objection.

Mr. GROSS. Mr. Speaker, reserving the right to object, that is hardly an answer to the gentleman's question. Is it proposed to run into tonight?

Mr. ALBERT. No.

Mr. GROSS. Then, the other conference reports that are not ready will not be called up today? Is that correct?

Mr. ALBERT. Would the gentleman be satisfied with the answer that none of them are ready now and we do not anticipate that any of them might be ready this afternoon. But if they are, we would like the indulgence of the House to call them up.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

Mr. GERALD R. FORD. Mr. Speaker, further reserving the right to object, there is one in which I have a particular interest. I have spoken to the distinguished chairman of the Committee on Appropriations concerning the supplemental appropriation bill which I understand has not yet been filed although permission has been granted to file it tonight. I would want some assurance that unanimous consent would not be asked for consideration of that conference report today.

Mr. ALBERT. I can assure the distinguished minority leader that no effort to bring up the supplemental appropriation bill will be made today.

Mr. GERALD R. FORD. I withdraw my reservation of objection, Mr. Speaker.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

RECESS

The SPEAKER. Accordingly the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 3 o'clock and 32 minutes p.m.), the House stood in recess subject to the call of the Chair.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 4 o'clock and 21 minutes p.m.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3016) entitled "An act to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, to authorize advance funding of such programs and for other purposes."

The message also announced that the Senate agrees to the amendments of the House to bills of the Senate of the following titles:

S. 65. An act to direct the Secretary of Agriculture to convey sand, gravel, stone, clay, and similar materials in certain lands to Emogene Tiimon of Logan County, Ark.;

S. 80. An act to direct the Secretary of Agriculture to convey sand, gravel, stone, clay, and similar materials in certain lands to Enoch A. Lowder of Logan County, Ark.;

S. 81. An act to direct the Secretary of Agriculture to convey sand, gravel, stone, clay, and similar materials in certain lands to J. B. Smith and Suia E. Smith, of Magazine, Ark.;

S. 82. An act to direct the Secretary of Agriculture to convey sand, gravel, stone, clay and similar materials in certain lands to Wayne Tiimon and Emogene Tiimon of Logan County, Ark.; and

S. 2325. An act to amend title 5, United States Code, to provide for additional positions in grades GS-16, GS-17, and GS-18.

CONFERENCE REPORT ON H.R. 15209, SUPPLEMENTAL APPROPRIATIONS, 1970

Mr. MAHON submitted the following conference report and statement on the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

CONFERENCE REPORT (H. REPT. No. 91-780)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15209) "making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 5, 7, 14, 22, and 25.

That the House recede from its disagreement to the amendments of the Senate numbered 11, 15, 17, 20, 21, 23, 30, and 31, and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$300,000"; and the Senate agree to the same.

Amendment numbered 3: That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$700,000"; and the Senate agree to the same.

Amendment numbered 6: That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$1,250,000"; and the Senate agree to the same.

Amendment numbered 9: That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$310,000"; and the Senate agree to the same.

Amendment numbered 10: That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$2,300,000"; and the Senate agree to the same.

Amendment numbered 12: That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows: In lieu of the sum named in said amend-

ment insert: "\$50,000"; and the Senate agree to the same.

Amendment numbered 16: That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows: In lieu of the sum named in said amendment insert: "\$2,048,000"; and the Senate agree to the same.

Amendment numbered 18: That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, as follows: In lieu of the sum named in said amendment insert: "\$1,000,000"; and the Senate agree to the same.

Amendment numbered 24: That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$1,040,000"; and the Senate agree to the same.

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Amendment numbered 28: That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment, as follows: In lieu of the sum named in said amendment insert: "\$1,000,000"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 4, 8, 13, 19, 27, 29, 32, and 33.

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JOHN J. RHODES
(except amendment 32),

Managers on the Part of the House.

CONFERENCE REPORT ON S. 3016, ECONOMIC OPPORTUNITY AMENDMENTS OF 1969

Mr. PERKINS. Mr. Speaker, I call up the conference report on the bill (S. 3016) to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, to authorize advance funding of such programs, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of December 19, 1969.)

The SPEAKER. The gentleman from Kentucky (Mr. PERKINS) is recognized for 1 hour.

HAPPY BIRTHDAY, MR. SPEAKER

Mr. ALBERT. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I am happy to yield to the distinguished majority leader.

Mr. ALBERT. I appreciate the gentleman yielding. I take this time to advise the House that this is the eve of the birthday of the world's greatest living legislator, our distinguished and respected Speaker. I join all Members of the House in wishing that tomorrow may be the happiest birthday in the life of our great Speaker, and that he may have many more of them as well as many more years of service in this House and to the people of this great country. Happy birthday, Mr. Speaker.

Mr. GERALD R. FORD. Mr. Speaker,

will the distinguished gentleman from Kentucky yield?

Mr. PERKINS. I am happy to yield to the distinguished minority leader.

Mr. GERALD R. FORD. I can only echo, reiterate, and magnify the words spoken by the distinguished majority leader. It has been a great privilege to serve with the Speaker this year, and I wish him happiness for many more years in the future.

Mr. PERKINS. Mr. Speaker, I likewise echo what has been said by both the majority leader and the minority leader. All of us wish you well for many, many more happy birthdays. You have served this House so ably and well for a long period of time. We all appreciate it.

Mr. Speaker, I call up the conference report on the bill S. 3016 to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, to authorize funding for those programs, and for other purposes.

I am happy to tell the Members that the bill we have brought back from conference is in substance the same bill passed by the House 8 days ago.

There were some slight modifications in which both sides gave ground. This is as it should be, and as it has to be in good faith negotiations between the two bodies of this Congress. The essential thing to remember as far as the House is concerned is that we did not give away anything.

The bill agreed to in conference authorizes the appropriation of \$2,195,500,000 for the fiscal year 1970 to carry out the programs established under the act. This is a down-the-middle split between the lesser amount authorized by the Senate bill and the greater amount contained in the House version.

For fiscal year 1971, the House bill had authorized the appropriation of such sums as were necessary. The Senate bill set a specific figure of \$2,148,000,000, plus \$240,000,000 for Project Headstart; \$14,000,000 for special impact programs under part D of title I; \$32,000,000 for legal services; \$80,000,000 for comprehensive health services; \$150,000,000 for emergency food and medical services; \$3,200,000 for senior opportunities and services programs; \$15,000,000 for assistance for migrant and seasonal farm workers programs under part B of title III; and \$50,000,000 for day-care projects, part B of title V.

The bill we brought back from conference authorizes \$2,295,000,000 for the fiscal year beginning next July 1, plus the amounts authorized by the Senate bill, with these three exceptions:

First, an additional \$15,000,000 for family planning programs;

Second, the additional amount for Headstart would be \$180,000,000; and

Third, the additional amount for emergency food and medical services would be \$112,500,000.

Among other items, the Senate receded from its so-called Murphy amendment. That amendment would have permitted a Governor to veto any legal services contract, agreement, grant, loan, or other assistance, and permitted only a non-delegable override authority to the President.

This feature did not occur in the House bill, and it aroused the stringent objections of the American Bar Association, an organization that has been in the forefront of the fight to bring legal representation within reach of the very poor.

The Senate also gave ground on the Legal Services amendment by the House, which limited the types of "counseling, education, and other appropriate services" which could be provided under legal services programs to "legal counseling, education in legal matters, and other appropriate legal services." The House amendment remains in the bill.

Mr. Speaker, one of the most difficult issues we had to resolve with the Senate concerned section 616 of the act, providing for the transferability of funds from one program to another.

This section presently authorizes and permits 10 percent of the amount appropriated for carrying out any program under the act to be transferred to any other program under the act. But this transfer may not result in increasing the amount otherwise available to the beneficiary program by more than 10 percent.

The Senate bill would have permitted 15 percent to be transferred during the first fiscal year of the new authorization, and 20 percent during the second. It took the ceiling off the amount by which the beneficiary program could be increased.

The House was content to let present law stand. Nothing to disturb those percentages was included in the House bill.

In the negotiations of Wednesday and Thursday, however, we were obliged to recede somewhat, and accept some of the Senate demands.

The conference bill leaves the 10-percent transferability figure intact for fiscal year 1970, but increases it to 15 percent for fiscal 1971. With respect to the limitation on the amount a beneficiary program can receive from such transfer, we agreed that in the case of a program for which \$10,000,000 or less is available, a maximum of 100 percent may be added. For any program with more than \$10,000,000 available, no more than 35 percent may be added.

Now, Mr. Speaker, the House bill did not provide allocations for specific programs of the amounts appropriated, except for a few instances involving special work and career development programs, Headstart and Headstart Follow Through programs, and the intensive programs to eliminate hunger and malnutrition.

The Senate bill provided special allocations for a number of programs carried out under the act. Briefly, these included:

First, \$890,300,000 for work and training programs;

Second, \$46,000,000 for special impact programs;

Third, \$1,012,700,000 for community action programs including \$338 million for Headstart, \$60 million for Headstart Follow Through, \$58 million for legal services, \$80 million for comprehensive health, \$25 million for emergency food and medical, \$15 million for family planning, and \$8.8 million for Senior Opportunities.

Fourth, \$12,000,000 for rural loans;

Fifth, \$34,000,000 for migrant and seasonal farm workers;

Sixth, \$16,000,000 for administration and coordination under title VI; and

Seventh, \$37,000,000 for VISTA.

The conference bill adopts the plan of the Senate bill, with a major change. As adopted by the conferees, \$328,900,000 must be reserved and made available for each of the 2 fiscal years involved for local initiative programs carried out under section 221 of the act. Only the remainder of the appropriations for each fiscal year would be allocated in the prescribed manner. The amounts so reserved are not subject to transfer under section 616 of the act.

Mr. Speaker, for the better understanding of the Members of the earmarking features of the House bill, the Senate bill, and the conference bill, I include these tables:

FISCAL 1971

The earmarks in fiscal year 1971 are identical to those in fiscal year 1970. However, several new authorizations are provided as additions to those already contained in the bill. These are as follows:

	Senate bill	Conference report
Unearmarked money.....	\$100,000,000	\$100,000,000
Special impact.....	14,000,000	14,000,000
New careers and mainstream.....		34,700,000
Headstart.....	240,000,000	180,000,000
Legal services.....	32,000,000	32,000,000
Comprehensive health.....	80,000,000	80,000,000
Emergency food and medical....	150,000,000	112,500,000
Family planning.....		15,000,000
Senior opportunities.....	3,200,000	3,200,000
Migrants.....	15,000,000	15,000,000
Day care.....	50,000,000	50,000,000

The fiscal year 1971 authorization in the Senate bill was 2,732,200,000. The House bill was open-ended. The conference report total for fiscal year 1971 is 2,831,900,000:

FISCAL 1970

	House bill	Senate bill	Conference report
Grand total.....	\$2,243,000,000	\$2,048,000,000	\$2,195,500,000
Title I.....		890,300,000	890,300,000
Operation Mainstream and New Careers.....	110,000,000		20,000,000
Special impact.....		46,000,000	46,000,000
Total, title I.....		936,000,000	956,000,000
Title II:			
Headstart.....	458,000,000	338,000,000	398,000,000
Follow Through.....	120,000,000	60,000,000	90,000,000
Legal services.....		58,000,000	58,000,000
Comprehensive health.....		80,000,000	80,000,000
Emergency food and medical.....	100,000,000	25,000,000	62,500,000
Family planning.....		15,000,000	15,000,000
Senior opportunities.....		8,800,000	8,800,000
Alcoholic recovery.....		10,000,000	10,000,000
Drug rehabilitation.....		5,000,000	5,000,000
Other—title II.....		426,400,000	434,400,000
Total, title II.....		1,012,700,000	1,140,200,000

Footnote at end of table.

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HOUSE

12. TAXATION. The House, 381-2, and Senate, 71-6, agreed to the conference report on H. R. 13270, to reform the income tax laws (H. Rept. 91-782) (pp. H12889-90, H12901-60, S17553-7, S17574-605). This bill will now be sent to the President.
13. NATIONAL SEASHORE. The Interior and Insular Affairs Committee reported with amendment H. R. 3786, to authorize the appropriation of additional funds necessary for acquisition of land at the Point Reyes National Seashore in California (H. Rept. 91-785). p. H12961
14. APPROPRIATIONS. Agreed, 261-110, to the conference report on H. R. 13111, Labor-HEW, and related agencies appropriation bill, 1970. pp. H12890-901
15. TARIFFS. The "Daily Digest" states the House considered by unanimous consent and passed H. R. 14956, to amend the Tariff Act of 1930--to extend the duty-free treatment of certain dyes. p. D1245
16. FOREIGN AID. The "Daily Digest" states conferees were appointed on H. R. 15149, the foreign aid appropriations bill, 1970. p. D1245
17. SUPPLEMENTAL APPROPRIATIONS. Both Houses agreed to the conference report on H. R. 15209, the supplemental appropriation bill, 1970 (pp. ~~D1245~~, S17623-36). This bill will now be sent to the President. (H13070-90,
18. ENVIRONMENTAL QUALITY. The "Daily Digest" states the House agreed to the conference report on S. 1075, to establish a national policy for the environment (p. D1246). This bill will now be sent to the President.
19. The House proceedings of Dec. 22, 1969, will be continued in the next issue of the Record. p. H12961

BILLS INTRODUCED

20. FISH INSPECTION. S. 3298 by Sen. Kennedy, to protect consumers and to assist the commercial fishing industry by providing for the inspection of establishments processing fish and fishery products in commerce, and to amend the Fish and Wildlife Act of 1958 to provide technical and financial assistance to the commercial fishing industry in meeting such requirements; to the Commerce Committee. Remarks of author pp. S17637-8.
21. RETIREMENT. S. 3301 by Sen. Harris, to amend title 5, U. S. Code, to include as creditable service for civil service retirement purposes service as an enrollee of the Civilian Conservation Corps; to the Post Office and Civil Service Committee.
22. MERCHANT MARINE. S. 3287 by Sen. Magnuson, to amend the Merchant Marine Act, 1936; to the Commerce Committee. Remarks of author pp. S17557-74.
23. HIGHWAYS. S. 3293 by Sen. Randolph, to amend title 23, U. S. Code, to provide for use of highway funds for public transportation; to the Public Works Committee. Remarks of author p. S17503.

24. FOOD ADDITIVES. S. 3295 by Sen. Nelson, to amend sections 201 (s) and 409 of the Federal Food, Drug, and Cosmetic Act, as amended, relating to food additives, to the Labor and Public Welfare Committee. Remarks of author pp. S17503-4.
25. AIRPLANE HUNTING. H. R. 15400 by Rep. O'Hara, to amend the Fish and Wildlife Act of 1956 to provide a criminal penalty for shooting at certain birds, fish, and other animals from an aircraft; to the Merchant Marine and Fisheries Committee.
26. MEAT INSPECTION. H. R. 15403 by Rep. Sebelius, to amend the Federal Meat Inspection Act to give additional time to small State inspected facilities additional time to comply with new inspection regulations and that State inspected facilities after meeting the inspection requirements shall be eligible for distribution in establishments on the same basis as plans inspected under title I; to the Agriculture Committee.
27. UNIFORM TIME. H. R. 15404 by Rep. Shriver, to amend the Uniform Time Act of 1918 to provide that daylight saving time shall be observed in the U. S. from the first Sunday following Memorial Day to the first Sunday following Labor Day; to the Interstate and Foreign Commerce Committee.
28. HEALTH BENEFITS. H. R. 15407 by Rep. Gonzalez, to amend chapter 89 of title 5, U. S. Code, relating to enrollment charges for Federal employees' health benefits to the Post Office and Civil Service Committee.
29. ENVIRONMENT. H. R. 15397 by Rep. Esch, to authorize the U. S. Commissioner of Education to establish educational programs to encourage understanding of policies and support of activities designed to enhance environmental quality and maintain ecological balance; to the Education and Labor Committee.
H. R. 15398 by Rep. Frey, H. R. 15401 by Rep. Mailliard, H. R. 15409 by Rep. Pelly, H. R. 15410 by Rep. Tiernan, H. R. 15411 by Rep. Udall, to establish a Joint Committee on Environmental Quality; to the Rules Committee.

position and there need be no affirmative showing regarding the appropriateness of the alternate course of transfer to the Criminal Division.

The Senate District Committee has disapproved, however, the further, procedural presumption proposed in S. 2981 as introduced—whereby transfer was mandated (in cases where a motion for transfer has been filed) unless the child were to prove that he ought not to be transferred. The bill as reported by the committee, to the contrary, mandates transfer only where the Government has shown that the child ought to be transferred, that is, where the Government has shown that juvenile disposition would not be appropriate.

In this last regard, the committee has specifically adopted the recommendation of the HEW Guide. The purpose of the amendment is to retain ultimate decisionmaking power in the court as to an inquiry which can only be pursued fairly if the court is allowed to exercise considerable discretion. (It should be recalled that transfer is intended to operate in the unusual case—and not in every case where the child and the offense create eligibility, nor even in every eligible case where the Government has filed the requisite motion.)

It is the committee's objective also to assign the burden of proof to that party which can more easily bear it. The committee has concluded that, as in most cases, supporting evidence will be more easily obtained by the moving party, the party bringing the motion. Similarly, Government Counsel (the Corporation Counsel), the committee has concluded, will ordinarily be more experienced with juvenile proceedings and more familiar with the treatment available in the juvenile system.

A further feature of proposed section 11-1104, District of Columbia Code (the transfer provision in section 5 of the pending bill) designed to render the transfer procedure viable consists of the enumeration of factors which must be considered at the transfer hearing. The list (in subsection (e)) is not intended to be exclusive, nor is any particular legislative intent directed to the inferences to be drawn from or weight to be assigned to evidence of the stated factors. Nevertheless, the committee's expectation is that the statutory listing will forestall a substantial amount of litigation which might otherwise arise in the development of guidelines for transfer on a case-by-case basis.

Eligibility for transfer is extended in S. 2981 in two notable respects: a motion may be filed for the transfer of a 15-year-old charged with a felony; and a 16-year-old may be transferred in a case involving a misdemeanor if the offense is committed while the child is under commitment as a delinquent.

It should be noted again that, rather than the statistics with which the District Committee was supplied indicating simply a substantial incidence of serious criminal conduct among 15-year-olds, the committee would have preferred to receive more direct evidence, impugning the 15-year-old's potential for rehabilitation, before being asked to approve the eligibility of certain 15-year-olds for transfer away from the juvenile system. Nevertheless, the committee recognized that eligibility for transfer is substantially less significant of itself under circumstances where there must be a showing in every transfer case (as is required under S. 2981 as reported) that juvenile disposition is inappropriate.

The eligibility of 16-year-old misdemeanants under delinquency commitment represents a substitute for the elimination of the mechanism for transferring uncontrollable delinquents to an adult facility. (See *Categories of juveniles*, above.) It is anticipated

that a motion for transfer will be brought when the misconduct of a delinquent in an institution cannot be handled effectively. It should not matter in such a case whether the misconduct amounts to a felony or a misdemeanor, if the supervisory authorities are moved to complain. There must be some mechanism available for relieving the juvenile institutions of the burden of uncontrollable juveniles; and, as between administrative transfer and fresh adjudication, the Senate District Committee deems the latter preferable.

Lastly, S. 2981 as introduced provided that, upon transfer, jurisdiction of the Family Division terminates with respect to any other delinquent acts—apparently irrevocably, regardless of the nature of the disposition in the Criminal Division, and apparently with regard to both pending and subsequent acts. The Senate District Committee has revised this provision so that (1) Family Division jurisdiction terminates as to any delinquent act committed subsequent to transfer, as is provided in the HEW Guide, with the understanding that, where circumstances warrant, the Family Division can terminate or suspend proceedings with respect to nonsubsequent acts. Also (2) under S. 2981 as reported, except where further criminal charges have been filed on the basis of conduct subsequent to transfer, Family Division jurisdiction over a child who has been waived is restored in the event that he is not convicted of the charge for which he is transferred.

In the opinion of the committee, Family Division jurisdiction must be restored where the basis of transfer has been invalidated. The committee recognized that the ultimate finding, regarding the reasonable prospects of rehabilitation, consists of a prediction as to the nature of the child's social character at the time of disposition. So too, the committee recognized that a great revelation to this prediction is the nature of the misconduct which, at the time of any dispositional hearing, the child will have been found to have committed. Yet, in the committee's opinion, it follows logically—from the fact that the transfer finding amounts to prediction and from the assumption in that prediction that the child has committed the acts alleged—that a child who is found not to have committed the acts may well not suffer from the lesser prospects of rehabilitation predicted, and ought to be returned to the juvenile system.

The provision, that criminal charges based on misconduct subsequent to transfer bar the restoration of Family Division jurisdiction, simply constitutes a practical tempering of the logic just described. This tempering is justifiable in that the nature of the pending charge is only one of several factors considered at the transfer hearing, and as an accommodation of the demands of administrative ease. Moreover, a juvenile found not guilty by reason of insanity is not restored, first, for the practical reasons just stated, and secondly, because the adult Criminal Division is no less well equipped to dispose fairly of mental health cases.

SUPPLEMENTAL APPROPRIATIONS BILL, 1970—CONFERENCE REPORT

Mr. BYRD of West Virginia, Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The assistant legislative clerk read the report.

(For conference report, see House proceedings of December 20, 1969, pp. H12854-H12855, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. BYRD of West Virginia. Mr. President, this bill passed the Senate on December 18, 1969, containing recommended appropriations in the amount of \$296,877,318. The Senate had considered budget estimates in the amount of \$314,597,852. The amount finally agreed to in conference today is \$278,281,318. I have before me the complete details on each item in this bill, and should any Member desire to ask me any questions I would be happy to answer them.

One of the most important Senate amendments in this bill relates to the coal mine safety bill, which has just been sent to the President for his consideration. The Senate will recall that we included, under the Bureau of Mines for health and safety in the Senate bill, \$15 million and under the Department of Health, Education, and Welfare, we included \$10 million for consumer protection and environmental health services—for a total of \$25 million relating to this new Coal Mine Safety Act. I am glad to report that in conference we were able to secure a total of \$22 million, consisting of \$12 million for the Bureau of Mines and \$10 million for the Department of Health, Education, and Welfare.

The Senate had included \$209,000 in this bill, under the Bureau of Sport Fisheries and Wildlife, for the preservation of the Steamboat *Bertrand* and its cargo at the DeSoto National Wildlife Refuge in Nebraska. Although we were not able to secure the full amount of the Senate bill in conference, we were able to secure approximately one-half—namely \$105,000. Under "Construction" in the Bureau of Sport Fisheries and Wildlife, the conferees agreed to \$2,300,000, and the managers on the part of the Senate are hopeful that the Bureau will be persuaded to use part of these funds for planning permanent storage and display facilities for the Steamship *Bertrand* and the artifacts found in the vessel.

The conferees also approved a figure of \$50,000 for the reconstruction of certain streets in Harpers Ferry, W. Va.

In addition, the conferees approved \$1,952,000, which was the amount of the Senate amendment, for the "Construction of Indian health facilities" item, to provide a community hospital in Fairbanks, Alaska. This amount will allow the Indian Health Service to participate so as to assure 18 beds and clinic space for Alaskan natives.

In section 1003 of the bill, the Senate had extended the continuing resolution to January 30, 1970, and the House conferees agreed to the Senate proposal in this regard.

Mr. President, in my view, the most

important amendment in this bill is section 1004, reaffirming the authority delegated to the Comptroller General to determine the legality of expenditure of appropriated funds.

The Senate voiced its will on that particular amendment during four rollcall votes on last Thursday. The House today has rejected the Senate position, and so we come back this evening to receive the instructions of the Senate on this point and on other points.

Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on the adoption of the conference report.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New York will state his parliamentary inquiry.

Mr. JAVITS. If we adopt the conference report, does that leave the question open on what I think is section 1004? Is that an item in disagreement?

The PRESIDING OFFICER. The Chair will examine the bill.

Mr. JAVITS. What is the section which deals with the power of the Comptroller General? I do not have the bill before me.

The PRESIDING OFFICER. The section pertaining to the Comptroller General, amendment No. 33, is a matter that is still in disagreement, and thus will still be open.

Mr. JAVITS. And will be submitted to the Senate after the conference report is agreed to?

The PRESIDING OFFICER. As an amendment in disagreement.

Mr. JAVITS. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the conference report. (Putting the question).

The report was agreed to.

The PRESIDING OFFICER. The clerk will report the amendments in disagreement.

The ASSISTANT LEGISLATIVE CLERK. Resolved, that the House recede from its disagreement to the amendments of the Senate numbered 8, 13, 19, 29, and 32, and concur therein with amendments.

The amendments in disagreement numbered 8, 13, 19, 29, and 32 are as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 8 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

"BUREAU OF MINES
"Health and Safety

"For an additional amount for expenses necessary to improve health and safety in the Nation's coal mines, \$12,000,000: Provided, That this paragraph shall be effective only upon the enactment into law of S. 2917, 91st Congress."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 13 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum named in said amendment, insert: "\$50,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 19 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

"DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

"Consumer protection and environmental health services environmental control

"For expenses necessary to improve health and safety in the Nation's coal mines, \$10,000,000: Provided, That this paragraph shall be effective only upon the enactment into law of S. 2917, 91st Congress."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 29 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the sum named in said amendment, insert: "\$4,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 32 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

"Sec. 1003. Section 102 of the Act of November 14, 1969 (Public Law 91-117), as amended, is further amended by striking 'the sine die adjournment of the first session of the Ninety-first Congress' and inserting in lieu thereof, 'January 30, 1970'."

Mr. BYRD of West Virginia. Mr. President, I move that the Senate concur in the amendments of the House to the amendments of the Senate numbered 8, 13, 19, 29, and 32.

Mr. GRIFFIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GRIFFIN. Do any of those amendments relate to the matter previously inquired about by the Senator from New York?

The PRESIDING OFFICER. No. The question raised by the Senator from New York was on amendment number 33.

Mr. GRIFFIN. I thank the Chair.

The PRESIDING OFFICER. Which will be acted on separately.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia. (Putting the question.)

The motion was agreed to.

Mr. SCOTT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Pennsylvania will state it.

Mr. SCOTT. May I now inquire as to whether the next order of business is amendment numbered 33?

The PRESIDING OFFICER. The Senator is correct.

Mr. SCOTT. Mr. President, it is my intention to move shortly to table the Senate amendment. Am I correct in my interpretation that if the tabling motion succeeds, the Senate language will be stricken from the bill, and, since the House has already disagreed to the Senate language, that will have the effect of eliminating from the report all reference to the so-called Philadelphia plan?

Mr. HRUSKA. Mr. President, a parliamentary inquiry.

Mr. SCOTT. May I have a ruling on mine, first?

The PRESIDING OFFICER. The Chair is taking the parliamentary inquiry of the Senator from Pennsylvania first, if the Senator from Nebraska will bear with the Chair.

If amendment number 33 were tabled, it would have the same effect as a motion to recede, which would take the Senate language out of the bill.

Mr. SCOTT. Mr. President, may I be recognized?

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SCOTT. Now I will be glad to yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, reference was made by the Senator from Pennsylvania as to whether that action would result in the complete elimination of any reference to the Philadelphia plan. The Senator from Nebraska would like to be informed where there is reference to the Philadelphia plan in this bill.

The PRESIDING OFFICER. The Chair answers the parliamentary inquiry of the Senator from Nebraska by referring to the question previously raised by the Senator from New York, which referred to amendment numbered 33, which is an amendment in disagreement—without trying to capsule the amendment.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. SCOTT. Mr. President, may I first read amendment numbered 33, so there will be a clarification of what we are discussing? That section reads:

Section 1004 reads as follows:

Sec. 1004. In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute: *Provided*, That this section shall not be construed as affecting or limiting in any way the jurisdiction or the scope of judicial review of any Federal court in connection with the Budget and Accounting Act of 1921, as amended, or any other Federal law.

I now yield for a parliamentary inquiry.

Mr. DOLE. Mr. President—

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. First, is a motion to table debatable?

The PRESIDING OFFICER. A motion to table is not debatable.

Mr. DOLE. Second, if the motion to table fails, where are we? We are here tomorrow, in other words?

Mr. SCOTT. And Christmas and New Year's.

The PRESIDING OFFICER. If the motion to table fails, the amendment in disagreement would be before this body.

Mr. JAVITS. And would be debatable.

The PRESIDING OFFICER. And would be debatable.

Mr. SCOTT. And if the motion to table fails, as far as the Chair is able to advise us, we may be here for Christmas or New Year's?

The PRESIDING OFFICER. The motion is debatable for quite some time.

It has been pointed out to the Chair by the Parliamentarian that the clerk has not reported the amendment.

Mr. SCOTT. May we have the clerk report the amendment?

The PRESIDING OFFICER. The clerk will read.

Mr. SCOTT. Without my yielding the floor.

The assistant legislative clerk read as follows:

Resolved, That the House insist upon its disagreement to the amendment of the Senate numbered 33 to the aforesaid bill.

Mr. HOLLAND. Mr. President—

Mr. SCOTT. Mr. President, I have the floor.

Mr. HOLLAND. The Senator yielded the floor when he asked for the reading.

Mr. SCOTT. The Chair recognized me.

The PRESIDING OFFICER. The Chair believes the Senator from Pennsylvania had the floor and, as a courtesy to the Chair, asked that the amendment be reported.

Mr. SCOTT. As a courtesy only, and I still have the floor.

Mr. HOLLAND. Mr. President—

Mr. SCOTT. I yield for a question.

Mr. HOLLAND. I do not care to ask a question, but there are certain documents I would like to put in the RECORD.

Mr. SCOTT. I have no objection to that if, by so agreeing, I do not lose my right to the floor.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Pennsylvania?

The Chair hears none, and it is so ordered.

Mr. HOLLAND. I thank the Senator.

The PRESIDING OFFICER. The Senator from Florida.

Mr. HOLLAND. Mr. President, I ask unanimous consent that there be incorporated in the RECORD a paper appearing on my desk, bearing the name of Senator Scott, entitled, "For Immediate Release, December 22, 1969, Office of the White House Press Secretary, the White House, Statement by the President." I ask unanimous consent that that full statement appear in the RECORD at this time.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

[For immediate release, Dec. 22, 1969, Office of the White House Press Secretary]

THE WHITE HOUSE—STATEMENT BY THE PRESIDENT

The House of Representatives now faces an historic and critical civil rights vote.

Tucked into the supplemental appropriations conference report is a provision vesting the Comptroller General a new quasi-judicial role. The first effect of this proposal will be to kill the "Philadelphia Plan" effort of this Administration to open up the building trades to non-white citizens. It is argued that the Administration seeks to restrict the role of the General Accounting Office and the Comptroller General. This is a false issue.

I wish to assure the Congress and the public of this nation that I consider the independence of the Comptroller General of the United States of the utmost importance is the separation of powers in our federal system. The amendment now under discussion by the Congress will not and should not be permitted to bring this principle into any doubt.

Of course, in the conduct of his independent review of all Executive actions, the Comptroller General may raise, and has often

raised, questions about the legality of federal contracts and whether funds, according to the law, should be spent under such contracts. The Executive has always, will always, give the fullest attention to his recommendations and his rulings.

When rulings differ, however, when the chief legal officer of the Executive Branch and the chief watchdog of the Congress end up with opposing views on the same matter of law, the place for resolution of such differences, is the courts—just as it is for the resolution of differences between private citizens.

The amendment as presently written makes a court review extremely difficult, even questionable. For example, fourteen contracts have been let under the Philadelphia Plan. If the amendment passes, these contracts will have to be cancelled. If the contractors should not elect to sue, the Executive Branch of the Federal Government could not—and the matter would not reach the courts unless a member of my Cabinet were intentionally to violate the law.

The position I am taking is, therefore, that the amendment need not be stricken but that it should be modified to permit prompt court review of any difference between legal opinions of the Comptroller General and those of the Executive, and to permit the Comptroller General to have his own counsel (rather than the Attorney General) to represent him in such cases.

To be quite candid, I share the Attorney General's serious doubts as to the constitutionality of this amendment and may have to withhold my signature from any legislation containing it.

RICHARD M. NIXON.

Mr. HOLLAND. I call particular attention to these two paragraphs in the statement. The first is:

I wish to assure the Congress and the public of this nation that I consider the independence of the Comptroller General of the United States of the utmost importance is the separation of powers in our federal system. The amendment now under discussion by the Congress will not and should not be permitted to bring this principle into any doubt.

The second paragraph which follows that one reads as follows:

When rulings differ, however, when the chief legal officer of the Executive Branch and the chief watchdog of the Congress end up with opposing views on the same matter of law, the place for resolution of such differences, is the courts—just as it is for the resolution of differences between private citizens.

I wanted those two paragraphs in the RECORD, because it seems to me they are completely irreconcilable.

Mr. President, I ask also for the incorporation of certain sections from the law which governs this situation:

The first such item is subsection (d) of 31 U.S.C. 65. I ask unanimous consent that that be printed in the RECORD.

There being no objection, the designated portion of the statute was ordered to be printed in the RECORD, as follows:

(d) The auditing for the Government, conducted by the Comptroller General of the United States as an agent of the Congress be directed at determining the extent to which accounting and related financial reporting fulfill the purposes specified, financial transactions have been consummated in accordance with laws, regulations or other legal requirements, and adequate internal financial control over operations is exercised, and afford an effective basis for the settlement of accounts of accountable officers.

Mr. HOLLAND. Then I ask unanimous consent that the first paragraph in 31 U.S.C. 74 following the title "Certified Balances of Public Accounts; Conclusiveness; Suspension of Items; Preservation of Adjusted Accounts; Decision Upon Questions Involving Payments," be printed in the RECORD.

There being no objection, the designated portion of the statute was ordered to be printed in the RECORD, as follows:

CERTIFIED BALANCES OF PUBLIC ACCOUNTS; CONCLUSIVENESS; SUSPENSION OF ITEMS; PRESERVATION OF ADJUSTED ACCOUNTS; DECISION UPON QUESTIONS INVOLVING PAYMENTS

Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller General of the United States, may, within a year, obtain a revision of the said account by the Comptroller General of the United States, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government. Nothing in this chapter shall prevent the General Accounting Office from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement.

Mr. HOLLAND. I thank the Presiding Officer, and I thank the Senator from Pennsylvania. I thought it might be appropriate to have in the RECORD the laws that govern this situation, and the statement of the President, and then let the readers of the RECORD decide for themselves as to who it is who is trying to break down the authority of the Comptroller General and the independence of Congress through its arm, the Comptroller General, in seeing that the expenditure of appropriations, which can only be made by Congress, be safeguarded as to whether they are in accord with the directions of Congress.

I thank the Senator for yielding.

Mr. BYRD of West Virginia. Mr. President, will the Senator from Pennsylvania yield?

Mr. SCOTT. I may in a moment. Mr. President, I think the full statement of the President should be printed in the RECORD, and not only a part thereof.

Mr. HOLLAND. I requested that the full statement be included.

Mr. SCOTT. I thank the Senator. I read the concluding paragraph, in which the President says, referring to this bill:

To be quite candid, I share the Attorney General's serious doubts as to the constitutionality of this amendment and may have to withhold my signature from any legislation containing it.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield to me for a question?

Mr. SCOTT. If I may do so without losing my right to the floor, I shall be glad to yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, it had been my intention to move that the Senate insist upon its amendment No. 33, after which I expected that the able Senator from Pennsylvania would either move to lay my motion on

the table, or move to recede, in which latter event his motion would have precedence over my motion to insist, and I thought the vote would then occur on his motion, whichever it was, the motion to lay on the table, which would have precedence, or the motion to recede.

Apparently he does not intend to give me an opportunity to move to insist. That was the purpose of my question: Does the Senator from Pennsylvania intend to give me an opportunity to move to insist?

Mr. SCOTT. Mr. President, I wanted to accommodate the distinguished Senator from West Virginia without losing the right to proceed in order, and in what I believe to be an orderly fashion, since the amendment, as I understand it, is before the Senate as a part of the conference report.

The PRESIDING OFFICER. The amendment in disagreement is before the Senate.

Mr. SCOTT. The amendment in disagreement, known as No. 33, is before the Senate. Therefore the issue may quite properly be raised without interfering with anyone's prerogative by a motion to lay on the table, or a motion to recede; is that not correct?

The PRESIDING OFFICER. The Senator is correct, the only difference being that a motion to lay on the table is not debatable.

Mr. PASTORE. Mr. President, will the Senator yield to me for a question?

Mr. SCOTT. Provided that I may do so without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PASTORE. The Senator from Pennsylvania knows that I am quite sympathetic to his position on this particular amendment, but I think it would be unfair, on this very important issue, to shut off debate.

Could we not have a unanimous-consent agreement, let us say, for an hour or an hour and a half, so that both sides could be heard, and then let it come to a vote and be voted up or down? I think, no matter what the result, it would leave a better taste in everyone's mouth. I think both those opposed and those in favor should be heard, but we do not want to go on ad infinitum. I think that is the purpose of the Senator from Pennsylvania; so can we not have a limitation of debate here, for an hour, 2 hours, or whatever Senators desire, and then, both sides having been heard, we could take a vote?

Mr. SCOTT. Mr. President, I think the distinguished Senator from Rhode Island has made a thoroughly reasonable suggestion. There is no desire to cut off debate under a limitation of time. What we are confronted with is a limitation of the session itself; and, confronted with a reality and not a theory, I am anxious to agree on a limitation of time, if we can, if, as a part of the unanimous consent request, it will include a right either to vote up or down or to lay on the table, as Senators may desire, and I would suggest that we agree on such a limitation of time.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. SCOTT. Provided that I may do so without losing my right to the floor.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a time limitation of 1 hour and a half on the pending question, with the stipulations contained therein as raised by the distinguished minority leader.

The PRESIDING OFFICER. The Chair advises the Senate that there is no question, before the Senate at this time. Further, the Chair wishes to say that if a motion to recede were made, with an agreement as to time, it would apparently accomplish what seems to be the desire of the minority leader.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for the purpose of making a motion?

Mr. SCOTT. Mr. President, I yield to the Senator from West Virginia for a suggestion as to a proposed motion.

Mr. BYRD of West Virginia. Mr. President, I move that the Senate insist on its amendment No. 33.

Mr. JAVITS. Mr. President, will the Senator yield for a parliamentary inquiry?

Several Senators addressed the Chair. Mr. STENNIS. Mr. President, may we have orderly procedure so that we can hear?

Mr. MANSFIELD. Mr. President, on that basis, I now renew my request.

Mr. JAVITS. Mr. President, reserving the right to object, and I think we can work it out, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. JAVITS. The Senator from West Virginia has made a motion that the Senate insist on its position. Now, a motion to recede has precedence, does it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. When that motion is made, following the disposition of the motion of the Senator from West Virginia, it is again debatable, is it not?

The PRESIDING OFFICER. That would be correct.

Mr. JAVITS. Therefore, I ask the majority leader, since we all know what we are after, should not that motion now be made? Then you have the final motion to lay on the table, and then the unanimous consent granted, which would apply to both, and then you are finished with it.

Mr. MANSFIELD. Mr. President, I amend it on that basis, and so move.

The PRESIDING OFFICER. Does the Senator now move to recede? Is that the motion?

Mr. SCOTT. That is right.

The PRESIDING OFFICER. Who makes the motion?

Mr. MANSFIELD. I so move, and ask unanimous consent that the time be equally divided between the minority leader and the manager of the bill.

The PRESIDING OFFICER. The time limitation to be for what period of time?

Mr. MANSFIELD. One hour and a half.

Mr. SCOTT. And at that time, there shall be a vote.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. MILLER. Mr. President, reserving the right to object, I should like to ask a question of the distinguished minority leader or the Senator from Virginia, so that I may be clear as to what we are doing.

I understand we have before the Senate a motion to insist; but suppose the Senate should feel disposed not to insist precisely on the language that is included in the bill, but suppose the Senate wants to have the conferees instructed to modify that provision to provide for judicial review, which, as I understand, is what the President's message proposes. How can we get that before the Senate, in the present parliamentary situation?

The PRESIDING OFFICER. Is that request addressed to the Chair?

Mr. MILLER. No, I am asking either the majority leader or the Senator from West Virginia, because the Senator from West Virginia is moving to insist.

I want to know if we are foreclosed if we support that motion from having the conferees instructed to modify that so that we will have the matter of judicial review before the Senate.

Mr. BYRD of West Virginia. Mr. President, I should think that the thing the Senate would want to do would be to vote against the motion to recede.

Mr. MILLER. I understand. However, then we have come to the motion to insist, and the motion to insist precludes us from asking the conferees to modify to provide for judicial review. And that is what the Senator from Iowa would like to do.

Mr. HRUSKA. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HRUSKA. Mr. President, it is competent for an amendment to be proposed to the subject matter of amendment No. 33?

The PRESIDING OFFICER. The Senate cannot further amend its own amendment.

Mr. HRUSKA. I think that is the answer, is it not, to the question of the Senator from Iowa?

Mr. MILLER. Mr. President, the Senator is not proposing to amend. The Senator from Iowa is proposing to instruct the conferees to follow the instructions and work out an arrangement whereby the amendment is preserved subject to judicial review.

We did that with the foreign aid bill the other evening. We instructed the conferees what to do.

I am not proposing that we have an amendment.

Mr. MANSFIELD. Mr. President, could we have a ruling on the time limitation and then raise the questions?

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

Mr. HRUSKA. Mr. President, reserving the right to object, if this discussion of the parliamentary situation will erode the time for debate on the merits, I think we ought either to enlarge the time or debate the parliamentary situation first.

Mr. JAVITS. Mr. President, will the

Senator yield for a parliamentary inquiry?

Mr. SCOTT. I yield.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, is it not a fact that if the motion to recede, which will take precedence, is voted up, that is the end of it?

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. And if it is voted down, the motion will then recur on the motion of Senator BYRD of West Virginia that the Senate stand by its position.

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. And if that is carried, the Chair will then probably be authorized to appoint the conferees. And after the Chair is authorized to appoint the conferees, and before he does appoint them, then any Senator may move to instruct the conferees.

The PRESIDING OFFICER. The Senator is correct.

Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, at the conclusion of this time, which is not to exceed 1½ hours, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The time is to be controlled and equally divided between the Senator from West Virginia (Mr. BYRD) and the Senator from Pennsylvania (Mr. SCOTT). Who yields time?

Mr. SCOTT. Mr. President, I yield myself 5 minutes at this time.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 5 minutes.

Mr. STENNIS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator will suspend until there is order in the Chamber.

Will all attaches remove themselves from the aisles?

The Senator from Pennsylvania is recognized.

Mr. SCOTT. Mr. President, among the issues here are, from the legal standpoint, whether the Comptroller General should be vested with the authority to do certain things which in the opinion of the Attorney General he does not have the constitutional authority to do.

This is by no means a derogation of the important functions of the Attorney General under the Accounting and Budgeting Act of 1921.

It is, however, important, where the Attorney General has exercised a judgment and handed down an opinion that a certain procedure in substantive law is legal, that the Comptroller General without the benefit of hearings or the necessity of formal argument—and he has no judicial experience and is not himself a lawyer—would hardly be in the position of being the chief reviewing officer without protection to the executive department or the right of appeal, and prompt appeal and prompt review by the courts.

The other body has already resolved

this issue by a standing vote of something like 125 to 83, and by a record vote of 208 to 156.

The other body has said to us that it does not accept the wording of the Senate amendment.

And we are now under this motion asked to recede from the Senate amendment, a motion which I support.

The issue has some collateral effect because without a right of review, without protecting the right of the Attorney General to be heard here, without protecting the normal course of appeal to the courts, one element—and this is only one element in this very broad attempt to grant power to the Attorney General—is what is called the Philadelphia plan which is a plan to forbid discrimination in employment, a plan which we were told this morning would make available in the construction trade some 10 million jobs in the decade of the seventies, a plan which in one specific instance alone—that is the medicare and medicaid field—will make available 60,000 additional jobs without displacing a single nurse, nurse's aide, or hospital aide; a plan in which 14 contracts have already been signed, contracts which, according to the President's statement of this morning, would have to be canceled in the event the Senate language prevails. All of these represent an attempt to implement the right of any American to secure a job without discrimination.

There is another issue. It does not appear in the printed RECORD, but it ought to be mentioned. That issue is that the other body has included a continuing resolution in the Second Supplemental Appropriation Act. If this body strikes down that provision, the other House has adjourned until tomorrow.

The PRESIDING OFFICER. The time of the Senator from Pennsylvania has expired.

Mr. SCOTT. Mr. President, I ask for 3 additional minutes.

The PRESIDING OFFICER. The Senator is granted 3 additional minutes.

Mr. SCOTT. Mr. President, if this body does not agree to the rather overwhelming action of the other body, this body and the other body may well decorate their Christmas trees within these Chambers. They may even be here to celebrate the arrival of the new year and to welcome in the decade of the 1970's.

There is another possibility which the President has raised quite clearly this morning. That is, if the continuing resolution and the second supplemental go to him with the so-called Philadelphia plan deleted, there is a very considerable chance that he will veto the bill. This, again, would give us an opportunity to get better acquainted with one another as the year 1969 draws to a close. All of these things are attractive—the possibilities to know one another better, to welcome in the decade of the 1970's, to jingle our bells on the floor of the Senate, to welcome the new year.

But I think a more realistic and logical approach would be to accede to the action of the other body, actively debated and clearly decided there, urged by the President of the United States, and necessary if we are to have in this country

equal opportunity for our citizens. It is not enough to say that all Americans may inhabit hospitals and hotels or eat at restaurants. If they do not have jobs and do not have money, all the other benefits of the various civil rights laws are of no value to them.

Mr. President, it having been suggested to me that no Senator needs to use all of his time, a suggestion with which I agree, I shall at this time yield the floor until some later time.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, I yield 5 minutes to the distinguished Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

Mr. HRUSKA. Mr. President, it is my intention to vote against the motion to recede. This is a subject of fundamental importance. It has been explained often that the presence in the Senate of this situation is triggered by the operations and activities under the awarding of certain construction contracts with a clause included in them incorporating the Philadelphia plan.

The position of this Senator deserves no apology of any kind in regard to his position on civil rights legislation. Starting with the act of 1957 and continuing steadily therefrom until the present day, this Senator has participated in the drafting of the legislation and has voted for every civil rights bill that now is in the statute books of the United States of America. At times there were long, protracted weeks of deliberation and negotiation to arrive at proper language that would be acceptable and workable. So that this Senator does have some knowledge of the background of the entire controversy.

No one would rather see a proportionate and a heavier representation of minority groups in construction jobs and construction positions than this Senator. Let there be no doubt about that. But, Mr. President, this Senator would draw a line on achieving that end if it is done by the violation of law, particularly when it is a fundamental law such as that involved here; and that fundamental law has its basis and its origins in the Budgeting and Accounting Act of 1921. That act says that the Comptroller General has the rights, the responsibilities, and the duties of, among other things, declaring expenditures illegal and not payable by the Government of the United States if he says that a law is being violated in the course of the proceedings on which claims are made against the United States. This is his job. That statute says in at least two places, expressly, that the ruling of the Comptroller General is final and conclusive upon the executive branch. That is what it says.

Now, then, what have we here? We have the Comptroller General making a decision to go ahead with certain construction contracts with the Philadelphia plan clauses. He meets with some remonstrance in Congress, and he comes here and has some conferences, and he is met in due time by a decision of the Comptroller General that this type of contract

is illegal, that it contravenes both titles VI and VII of the Civil Rights Act of 1964. Then he goes to the Attorney General and gets a contrary opinion. Then he revises that contract, and there is a second opinion, and the same division exists. Under those circumstances, the law still is that the decision of the Comptroller General is final and conclusive as to the executive branch.

I would be against receding on this motion for this reason. We should not proceed here to take any action that will be prejudicial to either side in this controversy, which ultimately must be decided in Congress. We will not have a fair vote at this late hour and this late day in the session. Our rate of absenteeism is very high. A vote tonight would not be representative and would not truly reflect the opinion of the Senate.

There is a desire for an orderly adjournment until January 19, so that, under a continuing resolution, the Department for which funds have not been provided will be provided for until we come back. That desire is in the way. I find no blame for Members who have felt that they wanted to leave and should leave.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HRUSKA. I ask for 3 additional minutes.

Mr. McCLELLAN. I yield 3 additional minutes to the Senator.

Mr. HRUSKA. I think this is a poor time to try to take a position here that would result in an adjudication of this matter to the prejudice of those who are contending one side or the other in the matter. A vote to lay on the table successfully disposed of, or this motion to recede, will not dispose of the issue. It still will be the law that the Comptroller General's opinion is final and binding upon the executive department. It still will be the law.

The harm is this, however: If we recede on this point, it will be taken by the executive department as a go-ahead signal to continue the entrance into additional contracts with the Philadelphia plan in them. It will be just piling up and adding to our troubles and our difficulties.

The issue on this vote is not whether the Comptroller General will have the right to rule expenditures illegal, nor will the proposition be whether his position is final or conclusive. That is going to stay as it is and as it has been for almost 50 years. Whether we approve or disapprove, the ruling of the Comptroller General is final and conclusive.

There are alternatives. One of them is contained in the President's statement tonight. One of them is to consider legislation which would enable either the Comptroller General or the Attorney General, or both, to go into court, with proper representation for both sides, not for the Comptroller General to be represented by the Attorney General as is mandatory under the present law. There is an alternative, but we cannot get at it tonight. We cannot get at it tonight because amendment 33, section 1004, is not amendable. We cannot consider those things.

I think it would be only fair to Congress and to the Senate that we not recede on this but that we keep it alive, in order that we can get at it at an early and suitable time in the next session.

At stake are the integrity and the sovereignty of Congress in the field of appropriations, in which it has a unique and a very powerful position under the Constitution, and which has been implemented by the Budgeting and Accounting Act of 1921. It will be gravely prejudiced if we recede on this point and throw this whole thing into a position of chaos, confusion, and uncertainty.

I urge that the motion to recede be rejected.

Mr. SCOTT. Mr. President, I yield 5 minutes to the distinguished Senator from Michigan (Mr. GRIFFIN).

Mr. GRIFFIN. Mr. President, I have listened with interest to the argument of the Senator from Nebraska, the very able and distinguished member of the Appropriations Committee.

The Senator makes the argument that the Senate should proceed in an orderly way; namely, that this matter not be disposed of this evening. I would agree with him that we should proceed in an orderly way to consider something so basic and important and fundamental as this; but, in my opinion, such a position would require the Senate to recede from its position and to remove from this supplemental appropriation bill a matter which is primarily legislative in nature, indeed, such a provision should never have been put in this appropriation bill in the first place.

Notwithstanding the vote of the Senate which overruled the point of order on this matter, it should have been clear that section 904—1004 in the conference report—constituted legislation on an appropriation bill.

This particular section speaks in terms of this or any other act. Its application is not limited to the use of funds appropriated in this act; it would apply to any act and reaches far beyond a mere limitation of the funds provided in this supplemental appropriation bill.

Furthermore, I would point out that to my knowledge no hearings have been held on this particular matter. It is a subject that should be considered, if at all, in the next session in appropriate hearings.

So I would say, and I appeal to my colleagues, that on procedural grounds alone, the motion to recede should be adopted.

Moreover, a very practical question confronts the Senate. Whether we like it or not, the other body has completed action on this bill and have adjourned until 11 o'clock tomorrow morning. It is highly questionable whether or not a quorum will be available tomorrow in the House of Representatives. Accordingly, they have most likely taken final action for this session on this bill. If we want to have a supplemental appropriation bill enacted—and such a bill is imperative since it includes a continuing resolution—it seems to me that as a practical matter in order to adjourn, we have to recede.

In addition, I would like to add that

the junior Senator from Michigan strongly believes the Philadelphia plan deserves the support of the Congress. We should not pull the rug from under President Nixon's initial efforts to make the civil rights movement meaningful in economic terms at this stage in our history.

It is fine that we have passed civil rights laws and given the blacks the right to vote, the right to enjoy equal accommodations and so forth. But if he cannot obtain gainful employment, these other rights are rather meaningless.

It is well known that particularly in the construction industry, unions and jobs have been closed to the blacks. Obviously, under the circumstances, the action taken by the President is completely justified. And it is in accord with the policies and practices that other administrations have pursued and that this administration is pursuing, it is an action and a policy that deserves the support of the Senate and the Congress.

Mr. President, I urge Senators to support the motion to recede.

Mr. BYRD of West Virginia. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 5 minutes.

Mr. BYRD of West Virginia. Mr. President, when the Senate passed supplemental appropriation bill (H.R. 15209) on December 18, it approved section 1004 by an overwhelming vote of 73 to 13.

As Senators will recall, this amendment, concerning which there was a thorough discussion, was adopted for the purpose of reaffirming the authority of the Comptroller General, as set forth in the Budget and Accounting Act of 1921, which authority had been challenged by an opinion issued by the Attorney General with regard to the so-called Philadelphia plan.

In the conference with the House on the supplemental appropriation bill, the conferees agreed on the need for this section and thus upheld the Senate position.

Although a good legislative record was made during debate on the floor as to the precise purpose of this section, and although I inserted all of the pertinent documents in connection therewith, I should like to state very briefly first how this controversy arose, and then restate again the need and the intent of section 1004.

First, as to how the controversy arose: On December 2, 1969, the Comptroller General wrote to me in my capacity as chairman of the Subcommittee on Deficiencies and Supplementals. In his letter he very concisely stated the problem and I should like to quote therefrom:

I want to bring a matter to your attention which I think is of utmost importance to the Congress and to the General Accounting Office. This involves the "Philadelphia Plan" promulgated by the Department of Labor to increase the number of minority group workers in certain construction trades.

The basic facts are (1) the Department of Labor issued an order requiring that major construction contracts in the Philadelphia area, which are entered into or financed by

the United States, include commitments by contractors to goals of employment of minority workers in specified skilled trades; (2) by a decision dated August 5, 1969, advised the Secretary of Labor that I considered the Plan to be in contravention of the Civil Rights Act of 1964 and would so hold in passing upon the legality of the expenditure of funds under contracts made subject to the Plan; and (3) the Attorney General on September 22, 1969, advised the Secretary of Labor that the Plan is not in conflict with the Civil Rights Act; that it is authorized under Executive Order No. 11246, and that it may be enforced in awarding Government contracts.

On the basis of the Attorney General's Opinion, the Department of Labor has proceeded with the Plan in the Philadelphia area, and it is planning to go ahead in several other metropolitan areas. Also, we understand that the Secretary of Transportation has adopted the "Philadelphia Plan" procedures in the awarding of highway construction contracts.

I want to make it clear that the General Accounting Office is not against greater opportunities for minority groups. However, we believe that actions taken by the Executive Branch in achieving this objective must be in accord with the laws enacted by the Congress. As stated in our opinion of August 5, 1969, we believe that the "Philadelphia Plan" is in conflict with Title VII of the Civil Rights Act of 1964 and is therefore unauthorized.

The Attorney General in his opinion of September 22, 1969, concluded with a statement that the contracting agencies and their accountable officers could rely on his opinion. Considering that the sole authority claimed for the Plan ordered by the Labor Department is the Executive order of the President, it is quite clear that the Executive Branch of the Government is asserting the power to use Government funds in the accomplishment of a program not authorized by Congressional enactment, upon its own determination of authority and its own interpretation of pertinent statutes, and contrary to an opinion by the Comptroller General to whom the Congress has given the authority to determine the legality of expenditures of appropriated funds, and whose actions with respect thereto were decreed by the Congress to be "final and conclusive upon the Executive Branch of the Government." We believe the actions of officials of the Executive Branch in this matter present such serious challenges to the authority vested in the General Accounting Office by the Congress as to present a substantial threat to the maintenance of effective legislative control of the expenditure of Government funds.

Mr. President, let me review briefly the basic issue which gave rise to the need for section 1004: The basic question for Congress was not whether the Philadelphia plan violates or does not violate the Civil Rights Act of 1964. The real question at issue is whether an opinion of the Comptroller General relative to the legality of the expenditure of appropriated funds is or is not "final and conclusive upon the executive branch of the Government."

While it is true that the issue arises from the desire of the executive department to encourage the hiring of more members of minority groups by Government contractors, this objective is secondary to the basic question presented: Whether the Congress—acting through its agent, the Comptroller General—has or does not have the final authority to determine the legality of obligating or expending appropriated funds.

The question presented must necessarily be answered in the affirmative. To say otherwise is to deny the constitutional authority of Congress over appropriated funds and thus limit the congressional function to simply approving or disapproving budget estimates submitted by the executive branch.

That the constitutional authority of the Congress is far broader is amply illustrated by its unchallenged actions when approving appropriations, to impose limitations and conditions on the expenditure of said funds.

The complete authority of Congress over appropriated funds is nowhere better illustrated than by the creation in 1921 and continued existence of the Office of Comptroller General, who exercises as the agent of Congress the delegated congressional authority to determine the legality of expenditures of appropriated funds.

Congress has decreed that such determinations will be "final and conclusive upon the executive branch of the Government."

By delegating its own constitutional authority to an agent, Congress in no way limits its authority. Thus, to advance the proposition that an advisory opinion of the Attorney General can overrule an opinion of the Comptroller General is to say that the executive branch is the final judge of the legality of the expenditure of appropriated funds. Such a proposition is not supportable by reference to the Constitution, nor by the precedents.

While the President cannot be compelled to spend appropriated funds, this Presidential power cannot be turned around to mean that the President, once Congress appropriates funds, can direct that such funds can be spent to carry out any program or to achieve any objective that the President alone determines and do so without further authorization from the Congress.

If the executive branch wishes to pursue the Philadelphia plan in its present form, then the President should request enactment by Congress of the necessary legislative authorization.

In conclusion, section 1004 is a reaffirmation of the authority of Congress as delegated to the Comptroller General by the Budget and Accounting Act of 1921, as amended, to make crystal clear that the Congress and not the executive branch will decide the legality of the obligation and expenditure of appropriated funds.

I hope that the Senate will reject the motion to recede.

Mr. SCOTT. Mr. President, I yield 4 minutes to the Senator from Illinois (Mr. PERCY).

The PRESIDING OFFICER. The Senator from Illinois is recognized for 4 minutes.

Mr. PERCY. Mr. President, I rise in support of the motion to recede and concur in the House provision in the Supplemental Appropriations bill on the so-called "Philadelphia Plan." In effect what I urge my fellow members to do is to strike out the provision in the Senate passed appropriation bill which directs that no Federal funds shall be expended in any Federal aid, grant, con-

tract, or agreement which the Comptroller General holds to be in contravention of any Federal statute.

I hold the Comptroller General and his able assistants in the General Accounting Office in high regard. They are the watchdog of the Congress and they have served the Congress and the taxpayer well by guarding against waste and inefficiency.

In urging deletion of this present authority proposed to be granted to the Comptroller General, I am in no way attempting to limit his power to protect the public purse. There are areas, however, where I believe the Comptroller General should not be granted absolute power or where total reliance should not be placed upon his competence. One in particular now faces us: the legal interpretation of Federal laws.

The General Accounting Office has been created primarily to make economic, fiscal, and accounting determinations as to the expenditure of public moneys. There is a small legal staff attached to the Office, but I believe it would be readily admitted by perhaps even by the Comptroller General himself that this legal staff is not generally equipped to render detailed, complicated interpretations on a broad range of Federal statutes, including their constitutional implications. And yet that is exactly what we will be doing if we impose this authority and responsibility upon the Comptroller General.

The functions now extended to the Comptroller General are those that readily belong within the province of the chief law enforcement officer of the country—the Attorney General, and ultimately, of course, with the courts. That brings us to the heart of the issue before us.

The Department of Labor has devised a procedure for encouraging equitable employment practices among the building trades in the construction field. Many construction trades have gone out of their way to assist members of minority groups in being accepted for apprenticeship training and in obtaining construction jobs thereafter. Unfortunately, this practice has not been universal.

A number of building trades have maintained practices which have all but precluded admission of members of minority groups into the trades contrary to law and contrary to the policy of their own national organization. This has had the effect of eliminating such individuals—no matter how competent—from obtaining the more favorable opportunities at the best construction sites. At times, such exclusion goes to such a ludicrous extent that essentially white crews drive each morning to public housing sites in neighborhood where only black citizens reside to work on housing projects where construction is made possible by Federal funds or guaranties. The irritation, bitterness, and frustration of this goad must be hard to bear.

In years gone by, labor and management confronted each other in a spirit of hostility and malice. The result was long strikes, extreme bitterness, violence, and tremendous economic loss. Then, both sides got smart and demanded to sit down and negotiate out their differences.

Federal laws were enacted to provide necessary rules, of the road. Labor-management relations have been civilized and essentially peaceful. The economy and the country has greatly benefitted. In the long run everyone has won.

The same situation faces us today between black men who want, need, and deserve jobs, including jobs in the construction industry, and white men who are concerned about preserving their jobs. There is only one smart way to resolve this and that is by establishing procedures which will stimulate, prod, and encourage both sides to agree together on sound, equitable hiring practices.

This is the Philadelphia plan. This plan is not coercive, as some have sought to make it out. It is merely a device for bringing all sides together to work out geographical areas for training and employment in the construction field.

It has been well said that there is no solution like a hometown solution. Only an arrangement whereby all sides can get together to work out their differences in a reasonable manner—based upon local conditions and factors—will prove workable in the long run. This is what the Philadelphia plan seeks to do.

But in Chicago, it is the "Chicago plan" which needs to be adopted. Based upon the needs, interests, and considerations of the workers and employees in the Chicago area, it is the vehicle for working out arrangements to provide fair opportunities in the construction industry for all who want them. Unfortunately, the plan may well fail because there is no established procedure which permits the various parties to resolve their differences, to develop goals for their mutual benefit.

A stimulus and direction must be established, rules, and regulations must be worked out, and goals must be developed to set a proper course of action. This is the purpose and benefit of the Chicago plan and those like it.

Programs are not forced; they are worked out in the give and take negotiation. Hearings are conducted, procedures are established, and a course of action is laid out accordingly.

This is the only sound way to proceed and, it is legal. The Attorney General has clearly briefed this matter and has found it in conformity with existing law. It is solidly supported by Secretary of Labor Shultz and by President Nixon.

Of equal importance, we in Chicago, as am sure in other urban areas, need this type of arrangement to encourage an equitable solution to employment practices in the construction industry. With the demand for residential and commercial construction facing our country and with the release boom that will strike the construction industry once the twin burdens of inflation and the Vietnam war are removed, no one need worry about a construction job. What we must worry about and plan for is that everyone shall be fairly entitled to a job if he so seeks one. Just as I suggest trade above labor aid, so I suggest a payroll above a relief roll. The Philadelphia plan will help insure this.

Mr. BYRD of West Virginia. Mr. President, I yield 5 minutes to the Senator from Arkansas (Mr. McCLELLAN).

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 5 minutes.

Mr. McCLELLAN. Mr. President, the action taken by the other body earlier this evening, and the action which the Senate is asked to take on the motion to recede on this issue, warrants headlines in the news tomorrow, "Congress Abdicates—The Senate Surrenders."

Mr. President, I do not want to be a party to the consequence of that result.

I cannot, therefore, support the pending motion.

The President, in his statement this evening stated:

The first effect of this proposal will be to kill the "Philadelphia plan."

If so, it will be because Congress terms that plan illegal.

The President continues:

I wish to assure the Congress and the public of this Nation that I consider the independence of the Comptroller General of the United States of the utmost importance in the separation of powers in our Federal system. The amendment now under discussion by the Congress will not and should not be permitted to bring this principle into any doubt.

Mr. President, the action Congress has taken does not bring that principle into doubt.

It is the action and position of the administration which has brought that principle into doubt.

The suggestion is that the way to get at this situation is to go to the courts by some arrangement that permits the executive branch to sue the legislative branch, or vice versa.

That is not the way to settle it. The way to settle it is for Congress to determine whether it will spend money for a given kind of contract.

It has that constitutional power. It has that constitutional duty.

This amendment only puts a limitation on the expenditure for that particular purpose.

Congress has a right to do that, whether the expenditure is legal or whether it is illegal, if it decides to do it. It does not have to appropriate money for a legal contract if it does not want that contract entered into.

Let me point out that Congress will be doing the stopping. Not by this amendment we adopted will the Comptroller General do the stopping of an expenditure. It will be the Congress itself.

Do you want to abdicate that power? I do not believe you do. Congress can stop or limit the financing of any project. We canceled contracts by stopping construction on the procurement of the Navy version of the TFX airplane. The contract was legal, but the Congress had a right to stop it, and it did stop it.

We have a right to stop this if we think it is illegal. In the meantime, while it is being litigated—and the President proposed an amendment to permit that—whose opinion will prevail? The Attorney General's or the Comptroller General's? If the Congress does not act, there will be more contracts. There are already 14.

More illegal ones will be entered into if this plan is permitted. Fourteen have already been made. Many more will be made. And the executive branch will, figuratively speaking, thumb its nose at the Congress, and particularly the Comptroller General.

Here is what we are doing tonight if we recede: The efficacy of the office of the Comptroller General will have been dissipated. Its opinions will no longer be controlling if the Attorney General rules otherwise. You are surrendering a duty and a function and a power vested in the Congress by the Constitution.

I urge Senators not to do it.

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. I yield 5 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 5 minutes.

Mr. BAYH. Mr. President, I have listened to this debate and discussion with a great deal of interest. I, very frankly, share the concern of my good friend the distinguished Senator from Arkansas as to the importance of the role of the Comptroller General. I have the greatest respect for the principal sponsor of the section which is now in question.

I must say that, despite this respect and this deep concern, I cannot, in good conscience, come to the same conclusion. I suppose that is another example of reasonable men in this body, having a chance to examine all the facts, not necessarily agreeing on the interpretation or the impact of those facts on the broad course of history.

I feel that earlier in the discussion of this amendment the Senate erred, and I hope this evening we will follow the leadership of the Senator from Pennsylvania and concur in the judgment which was rendered earlier by the House.

This is a matter of some significance and controversy. There is not a Senator here who does not realize the facts involved. But I wonder if it is not high time for us to face up to this controversy, to realize that the problems that are manifested by it, are not going away? Our country is not going to reach the standards which we all aspire for it unless we make opportunity available for all our citizens, which I think this measure is going to impede.

I have reached this conclusion for two basic reasons.

First of all, although, as I have said, I completely concur in the interpretation of the Senator from Arkansas as to the importance of the Comptroller General, I do not see the action we take by removing this section from the bill as destroying the intended power of the Comptroller General.

It seems to me we are giving him additional power by this particular section. We do not really know whether the Philadelphia plan is constitutional or not. We are not going to until it has a chance to go through the courts, and I would like the Supreme Court of the United States, which is the final determinant of the constitutionality of any piece of legislation, to have a chance to speak on this

and for us not to take it away from the Court.

My second reason is a matter of the greatest controversy of all, and that is the goal of the Philadelphia plan itself. It is perhaps the most controversial piece of legislation that has come before this body in the 7 years of my service here, but I think the goal it seeks is very meritorious.

In the short period of time that I have had the good fortune of representing the people of Indiana in this body, we have made a tremendous amount of progress in wiping away the vestiges of second-class citizenship that have existed for 100 years. We have made great headway in opening up, to all citizens, public parks and facilities. We have made it possible for any man to get in his car, drive across the country, be able to stop and rest, buy gasoline, and eat with his family. We have made it possible to remove those vestiges of discrimination. We have dealt with the critical problem of housing, which is another controversial act. In 1964, we enacted a law also in the area of voting and registration. It is up to this body and the other body to act on that matter in this Congress. It will be the pending order of business, as I understand, on March 1, when it will be reported from the Judiciary Committee.

It seems to me if we are going to make a stand on the matter of equal rights and civil rights meaningful, we are going to have to deal with the nitty-gritty of economics. It does not make any difference what the laws are unless we are able to plug the loopholes so that those who are hungry have an opportunity to use the law to provide for themselves gainful employment and adequate compensation for a day's work.

Today, I think the black citizens, the brown citizens, the minority citizens of this land are yearning for one thing, and that is an equal piece of the action in the economy of the country.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. May I have 2 or 3 additional minutes?

Mr. SCOTT. I yield 2 additional minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. BAYH. They want an equal opportunity for a piece of the action in the economy of this country. They want a chance to go in business for themselves. They want a chance to get equal jobs if they are equally qualified to hold them down, which is what is proposed in the Philadelphia plan, controversial as it is.

To a great degree, we have already gone through this development in the step of opening equal opportunity in the industrial unions insofar as corporations that have Government contracts are concerned. Now we are seeking to reach those places of employment which have not yet been treated in such a way as to guarantee that all employees have an equal opportunity.

I think, first of all, that the Executive has the authority and the duty to require employers who do business with the

Government to provide equal employment opportunity.

Second, I think the passage of the Civil Rights Act of 1964 did not deprive the President, pursuant to executive orders, to require equal employment opportunities by government contractors.

Third, in my judgment, the revised Philadelphia Plan is lawful under the Government's Federal procurement statutes, under the executive order pertaining thereto, and under title VII of the 1964 Civil Rights Act.

I think it is important for the Senate, as the House did earlier, to demonstrate good faith; that we are going to make it possible for the citizens of this country—the minority citizens who have been bypassed in the great economic growth of this country—to get jobs; to earn for themselves, not by special privilege but by equal opportunity, their livelihoods as craftsmen and skilled workers when they are equally qualified with the man who is working next to them.

If a Government contractor does not provide that opportunity for workers of whatever race or creed so they may earn an equal paycheck, then I do not think the taxpayer should pay him for pursuing those contracts. It is as simple as that. That is equity pure and simple.

That is why I feel compelled to support the strong position of equity of the Senator from Pennsylvania.

Mr. GRIFFIN. Mr. President, will the Senator yield to me for a comment?

Mr. BAYH. I am happy to yield.

Mr. GRIFFIN. I wish to commend the Senator.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SCOTT. I yield the Senator 1 additional minute.

Mr. GRIFFIN. I commend the Senator from Indiana for making his very lucid and very courageous statement. It is no secret that the lobbyists of organized labor are very busy in the corridors of the Capitol trying to defeat the Philadelphia plan. Unfortunately, very few of the Senators from Indiana's colleagues on that side of the aisle are speaking out in support of the motion to recede now before the Senate. Accordingly, I wish to emphasize the very courageous statement of the Senator from Indiana and to commend him on it.

Mr. BAYH. I thank my colleague from Michigan. If I might have a minute to respond —

Mr. SCOTT. Yes.

Mr. BAYH. I hope that when the vote is taken, the results will show there have been a few more converts joining us this time.

Mr. GRIFFIN. Amen.

Mr. SCOTT. I think the Senator is making an excellent statement.

Mr. DOMINICK. Mr. President, will the Senator from West Virginia yield to me?

Mr. BYRD of West Virginia. Mr. President, I yield 1 minute to the Senator from Colorado.

Mr. DOMINICK. I just wish to say, in view of the statement the Senator from Michigan has just made, that I have supported the Senator from West Virginia on all the votes up to this point,

and I have not been approached by any labor people since this happened, but I am sure they are around talking to some.

I would love to have some of their support sometime, but to the best of my knowledge they have never seen fit to give it in any election I have been in yet. So I wanted the Senator from Michigan and the Senator from West Virginia to know that my support is not generated by the position of labor leaders.

Mr. GRIFFIN. Mr. President, will the Senator yield to me?

Mr. BYRD of West Virginia. On the time of the Senator from Pennsylvania.

Mr. SCOTT. I yield the Senator 1 minute.

Mr. GRIFFIN. The Senator from Colorado is absolutely in order in making that statement, and I want to make it clear that I did not intend to suggest that every Senator who took a position opposed to the administration was, by any means, submitting to the pressure of organized labor. I do not mean to leave that impression.

It is a fact, however, that there are lobbyists from organized labor who are working on this issue, and I think the Senator from Colorado will agree with that.

Mr. BAYH. Mr. President, will the Senator yield 1 minute to me?

Mr. BYRD of West Virginia. Mr. President, I yield myself 5 minutes.

Mr. BAYH. Will the Senator from West Virginia permit me to put a 1-minute statement in the RECORD here?

Mr. SCOTT. I yield the Senator from Indiana 1 minute.

Mr. BAYH. Mr. President, I think this just disproves some statements made on the floor earlier this year, when a very controversial nomination was discussed, that certain Senators were bought and sold by certain organizations. I do not think there is any Senator on this floor who can be bought by any pressure group if he thinks what they advocate is wrong. It so happens that I think certain groups are wrong on this issue. The people of this country are crying out for progress on the question of equal economic opportunity, and that is the reason why I support the Senator from Pennsylvania on this amendment.

Mr. SCOTT. I thank the Senator.

Mr. BYRD of West Virginia. I yield 5 minutes to the Senator from Florida.

Mr. HOLLAND. Mr. President, I wish to say, in the first place, that not only has no agent or member of any labor organization approached me, but the only person who has approached me on this issue outside the Senate is the Comptroller General of the United States. He appeared before our committee; he did not come to me individually. It is made his duty under the law by which his office was created for him to report to Congress. He was carrying out his duty when he came to us and reported to us that, in effect, his judgment was being overcalled by the judgment of the Attorney General.

I heard one of my friends on the other side say something about the matter of supporting the President. There are a good many men sitting on the other side of this aisle now who have not supported the President as much this year as has

the Senator from Florida. I make no apologies for that at all. I am looking at some Senators right now who did not follow the President of the United States on some of the most important matters, to him and to the Nation, which have been presented this year. I am not following him on this matter, nor am I following his Attorney General, because I think they are wrong.

There has been so much talk here tonight that is not in accord with the facts that I do not know how to go about hitting it, except one little bit at a time.

One Senator spoke of the fact that the GAO had a very small staff, and could not go into things very fully. That Senator does not know anything about the GAO or he would not have made that statement. It has 4,300 employees. It is one of the largest agencies in our Government. It is equipped as Congress wants it to be equipped, to go into the important matters of deciding whether the accounts are being kept right, and the money spent in accordance with the directions of Congress.

Mr. President, there is no doubt in the world about the fact that Congress alone can appropriate money. There is no doubt of the fact that in 1921 Congress passed the Accounting and Budgeting Act of 1921, which was signed by the President at that time. It was amended in 1950 by Congress, and that amendment was again signed by the President. It was thought to be wholesome legislation, to secure, right down to the time of expenditure, the fact that money should be spent in accordance with the directions given by the Congress, which is the only agency that can appropriate the money.

Mr. President, I cannot go in detail into these matters in this limited time, but I have placed in the RECORD the section of the statute which makes it clear that the Comptroller General is "an agent of the Congress directed at determining the extent to which accounting and related financial reporting fulfill the purposes specified, financial transactions have been consummated in accordance with laws."

And so forth. That is his purpose. It is to protect the Congress. He is defined as an agent of Congress, and he came to us to report that his agency was being violated. We very properly acted, in the only way possible at this late time in the session, to protect our agent or arm in carrying out our direction, to see that the law was observed.

Mr. President, it is unfortunate that this matter comes up in connection with a civil rights case, because nearly every Senator has dedicated himself to opposing the principle involved in the amendment which we placed on the bill, even though it was passed by a good vote of the Senate, when we were talking about civil rights.

This might just as well be an expenditure for the construction of roads, or for the construction of public buildings in the Capital, or for the construction of ships or airplanes—for any item as to which money that Congress appropriates can be expended. It might just as well have arisen in such an instance.

The question is whether a law means anything when it says—and I quote it as briefly as I can in this limited time—as against the executive department only, that the amounts determined by the General Accounting Office "shall be final and conclusive upon the executive branch."

The PRESIDING OFFICER. The time yielded to the Senator from Florida has expired.

Mr. BYRD of West Virginia. Mr. President, I yield 2 additional minutes to the Senator from Florida.

Mr. HOLLAND. Likewise, the act gives the right of appeal. When an appeal is taken by the General Accounting Office, the law provides, again, that his ruling shall be final and conclusive upon the executive branch. That is the purpose of the legislation.

The Attorney General is a member of the executive branch. There is no doubt of it. He is attempting here to take over and manage the General Accounting Office, which is an arm of Congress.

People are talking foolishly about having lawsuits between the executive department and the legislative department. What are we thinking about? All these questions can be decided, and they are decided in hundreds of cases in the courts by people who are interested, people who have contracts, people who are working.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. EAGLETON in the chair). There will be order in the Senate. The attachés will take seats. Persons who are not permitted to be in the Chamber will leave.

Mr. BYRD of West Virginia. Mr. President, the Senator from Florida is entitled to be heard. This is an important subject. If only one Senator wants to listen, that one Senator is entitled to listen and to be able to hear what the Senator from Florida is saying.

The PRESIDING OFFICER. The point of the Senator from West Virginia is well taken.

Mr. HOLLAND. Mr. President, this question is not going to be dead tonight, because Congress is not going to stand idly by and see its authority taken away and its agent destroyed by anyone in the executive department, whether it is an ambitious Attorney General or whoever else it may be.

The Senator from Florida is just as sure that with a little time to look at this matter, the Senate will realize that it is our independence, the independence of Congress, that is being assailed, and will be assailed, if this program goes through, because while the civil rights program is a very appealing one, the next time it may be something which more concerns bread and butter than civil rights, something more affecting the security of the Nation than civil rights.

The question is whether we will stand up for constitutional rights and for an act approved by two fine Presidents, which has not been questioned since 1921, and has always been obeyed by the executive department until this particular instance.

I hope that the Senate will hold up the

hands of its agent, the Comptroller General, and of the law as it now stands. That is the challenge that is being made to us. The question is whether we want to be parties to tearing down the pillars of the temple in which we serve. That is just what the question is. So far as I am concerned, I will not be a party to tearing down those pillars.

Mr. SCOTT. Mr. President, I yield 5 minutes to the senior Senator from New York.

Mr. JAVITS. Mr. President, there is one basic point, it seems to me, that we have to decide. That is why we have this provision now after 50 years, if the Comptroller General has all the power which the opponents of this motion say he has. And he has not.

He has been asserting this power for half a century, apparently with enough success to warrant the continuance of the power and with enough success so that we do not have to legislate about it specially until we get into a situation in which all of a sudden everyone decides he has to have this power but-tressed.

It cannot be so big and it cannot be so absolute if Congress decides the minute he gets in a contest with the Attorney General that it has to rally to his side. He does not have all of this power.

However, that is the way it has worked for the past 50 years. It is a good thing that he is not absolutely sure of his ground any more than is the Attorney General.

As so often happens in our free society, it works out better.

Now, we want to nail it into law. If we sustain the claim which is sought in this particular appropriations bill, the result will be to settle a constitutional issue by giving absolute power to this congressional officer because in this particular case he happens to decide with a lot of the Members of Congress, who in the other body have already been demonstrated not to be in the majority, who want to certify in him this absolute power.

The Attorney General claims not to have such absolute power. As the Attorney General, he is amenable and susceptible to the courts at all times. He does not claim this absolute power, that whatever he holds about Federal law or the Constitution is controlling on the part of the people of the United States and the Congress and the Executive.

Yet, that is what is in a supplemental appropriation bill at the tail end of the session in an attempt to endeavor to latch it into our constitutional system.

The debate is infinitely greater than the cause which has brought this provision about.

What are the proponents of the provision trying to do in connection with this very practical Philadelphia plan? The contractors are running into a situation in which they might have to sue for their money. A Government department is in doubt and may be unable to certify their vouchers.

However, they are not satisfied with that. They want them to buy a law suit. Who wants to buy a law suit?

Yet this is exactly what this provision says.

He has already held that any contract made under this plan is unconstitutional.

So if we ram it down their throats and say that anything he holds to be in contravention of that Federal statute is absolute and vital, they are just buying a lawsuit, if that little area of doubt is eliminated, and the plan is finished.

We have been trying to find lots of ways to do a lot of things to remedy conditions in the building construction industry, not only with respect to this question of discrimination in employment, for years and years, and indeed for decades, which have plagued the construction industry, but also in respect of more modern methods and different ideas and a breath of fresh air in respect to this industry.

And that is what many Senators have always tried to contend for in regard to the trade associations until this issue comes up. And then it becomes an issue between the power of the Comptroller General of the United States and the Attorney General of the United States.

And the fundamental point with respect to what is being attempted here will be aborted or killed and overlooked.

That happens to be what many of the same Senators have been after for years. But they do not want it under this guise.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SCOTT. Mr. President, I yield the Senator an additional 3 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for an additional 3 minutes.

Mr. JAVITS. Mr. President, the strongest case for this particular provision before us is that we have to find in our society ways in which grave social and economic pressures can be alleviated. And we cannot abort these processes. The courts and Congress and the executive all have their part to play.

And here one party gets inflexible, which is what this amounts to, because we must remember that the Comptroller General has already ruled that the plan is illegal. So we would not be conferring on him the power to make the decision. He has already made it. And it has been properly held that this removes the whole idea.

That is very much, in my judgment, against the social order of our country and the effort to give relief to the pressures and have them build up instead in terms of national order and national tranquility, and have absolute power in the hands of a public official. We, who believe so much in sharing power, should be the last body of the government—that is, the whole Congress—to give anyone this absolute power.

Yet, faced with something that they do not like, they are ready to give absolute power to the Comptroller General of the United States.

We regard it as unwise to let anyone have this absolute power. It would be a good thing for Congress to debate the matter and decide the whole legal question. However, certainly not under these auspices and under this kind of frame of reference in a supplemental appropriation bill at the very tail end of the

session, to decide a question of the constitutional magnitude that faces us here.

The Senate has been given a proper way in which to deal with this matter in accordance with the action of the other body.

I hope very much that we sustain the motion to recede.

Mr. BYRD of West Virginia. Mr. President, I yield 3 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 3 minutes.

Mr. BAKER. Mr. President, I thank the Senator from West Virginia.

It occurs to me that at this moment we are debating something that we really cannot determine under the doctrine of separate powers. In effect, we are trying to decide by legislation in the way of an amendment to the supplemental appropriations bill whether there is a great deal of merit to the legal opinion by the Comptroller General or by the Attorney General.

And in my humble opinion, neither of these fine public officials who are servants of the Government have any authority to do anything more than to give their opinion. In the final analysis the judiciary in the United States is to decide the question involved in the dilemma we are confronted with, and that question is whether the so-called Philadelphia plan is or is not prohibited by the Civil Rights Act of 1964.

Under the form of the Constitution and the doctrine of separation of powers, we cannot decide that affirmatively. Nor can the executive department or any of its agencies, including the Attorney General of the United States, except in terms of an advisory opinion. Only the judiciary can decide that point.

The judiciary has not decided the point of whether the Philadelphia plan does or does not violate the provisions of the Civil Rights Act of 1964.

Unfortunately, after many days of concern and debate in this Chamber, and efforts to compromise which have not succeeded, I have reached the reluctant conclusion that we are engaging in something that really is not determinative; because no matter whether we pass the bill in this form or some other form, whether we recede and concur or stand on our amendment as adopted by the Senate, the Supreme Court of the United States and the judiciary of the United States finally will decide: Does the Philadelphia plan violate the provisions of the Civil Rights Act of 1964?

What they say, under the constitutional prerogative, will be determinative. What we say will not. So it does not make much difference which way we vote on this matter. It does not make much difference except in terms of symbolism and except in terms of psychological and social impact that it may or may not have. Unfortunately, I am forced to conclude that the psychological or symbolic impact of the situation can be and often is greatly overrated.

I do not see this as a great civil rights issue of 1969, and I say that with all deference to those who espouse the cause of the movement to recede and to con-

cur. I say it also against the background of one who has voted, I believe, for every civil rights issue of any consequence that has been presented to this body since I have had the privilege of serving in it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAKER. I ask for 1 additional minute.

Mr. BYRD of West Virginia. I yield 1 additional minute to the Senator.

Mr. BAKER. So I reluctantly come to the conclusion that what we are trying to do now is to legislate a judgment on the effect of the Philadelphia plan in relation to the Civil Rights Act of 1964, which it is not our constitutional prerogative to legislate. We can express our opinion. But, regardless of what position we take or do not take, nothing we do or fail to do can detract from the inherent constitutional authority of the Supreme Court of the United States finally to say whether or not it does or does not violate the provisions of the Civil Rights Act of 1964.

Mr. SCOTT. I yield myself 2 minutes.

Mr. President, on the authority of the President of the United States this morning, I am in a position to say that he has said this day that this Philadelphia plan offers a great opportunity to advance the equal employment of all Americans and that this opportunity is one which he sincerely hopes will be given to the non-white people of America.

I have heard that statement made this day by the Secretary of Labor, who is in my office at this time, and by the Attorney General, and, therefore, I must respectfully disagree with anyone who says that this is not a civil rights issue.

This is an issue of justice, of equal employment, of equal opportunity; and when we are all through, the Comptroller General will have whatever powers he legally has and the Attorney General will have whatever powers he legally has. But this action will avoid the cancellation of 14 contracts already entered into in good faith, in which the U.S. Government has a strong interest, and will preserve the legal situation pending any further testing of the matter in the courts.

I ask all Senators if they do not vote to recede in this matter, what will they do tomorrow? The House has adjourned until 11 a.m. tomorrow. A quorum may not be in town. Ask yourselves very seriously what you will do tomorrow if there is no quorum. Will you go home? Or will the House come back? And when will the next session of this Congress be held? The continuation of this Congress now depends, in my opinion—I do not assert it as more than a single person's opinion—on whether we vote to recede or not to recede. Each Senator must accept that responsibility for himself, and others will disagree, and I respect that. But I say, with all due respect, if you do not vote to recede, ask yourselves where you will be tomorrow.

The PRESIDING OFFICER. Who yields time?

SEVERAL SENATORS. Vote! Vote!

Mr. BYRD of West Virginia. Mr. President, I yield 5 minutes to the Senator from Wyoming.

Mr. HANSEN. Mr. President, I rise, first of all, to take respectful exception

to the question that has been posed by my good friend and leader, the distinguished senior Senator from Pennsylvania.

I would not feel very good, deciding an issue that I felt was of great importance to this country on the basis of whether it suited my own pleasure tomorrow or the next day. I hope, along with a good many other Senators, that I might be home at Christmas. It takes me about a full day to get there, and I would be pleased to be there. But I am not going to compromise my basic convictions in order to satisfy the pleasure I would derive from being at home with my family.

I am disturbed about this issue, and I have thought long and hard on it. I hate very much to disagree with my President, with our President, but it seems to me that some very basic issues are involved here. I certainly do not presume to predict what the Supreme Court of the United States might do if and when it has before it the issue of whether or not the Philadelphia plan is in contravention to the 1964 Civil Rights Act. It does seem to me, however that there would be a conflict.

I would also point out that there seems to be some absurdity in the Philadelphia plan if we try to carry its provisions to their logical conclusions. How are we to determine what the minority groups are in this country that should be considered? In Wyoming, and in other Western States, Indians, according to some definitions, may be persons of one-half Indian blood or one-quarter Indian blood. When we recall that the Civil Rights Act of 1964 says that no quotas can be kept, I would think it would be extremely difficult for an employer to keep the kind of records necessary in order to carry out the mandate of the Philadelphia plan.

A former Wyomingite, now dead, the late Thurman Arnold became the major trustbuster of the Federal Government and sought to enforce the Sherman and Clayton Antitrust Acts.

This respected member of the Roosevelt administration was successful in establishing himself as the trustbuster, but he never forgave the Supreme Court of the United States for its failure to include labor unions under the provisions of the antitrust acts. He warned over 30 years ago that concentrated power in the labor unions, especially when used for other than direct collective bargaining purposes, was just as dangerous as concentrated power in the hands of business. Yet the Philadelphia plan provisions are aimed at the actions of the employer. When are we going to require actions by the labor unions with which the employer must deal?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BYRD of West Virginia. I yield 2 additional minutes to the Senator.

Mr. HANSEN. When Congress determined that the South was not moving fast enough to register and vote citizens belonging to minority groups, the Voting Rights Act was passed which applied only to States in which 50 percent of the eligible citizens were not registered or

did not vote. I suspect, and it seems to me not unreasonable, that the same attitude now might be displayed by this Congress with respect to the labor unions of this country. That is where the basic trouble resides.

Because of their discriminatory practices labor unions have denied blacks the opportunity to qualify for the type of job the Philadelphia plan seeks to secure for them. I hope Congress will have the courage to face up to the issue. I can be counted on to support those who want to see that the civil rights laws apply to all the institutions of this country. When that is done we will not have to worry about using a subterfuge to achieve a very laudable objective—equal job opportunity.

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. Mr. President, I have no requests.

Mr. BYRD of West Virginia. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from West Virginia has 6 minutes remaining; the Senator from Pennsylvania has 8 minutes remaining.

Mr. BYRD of West Virginia. Mr. President, I regret that the issue in the Senate and in the House of Representatives has been fought on the civil rights battleground. The basic issue involved here is not a civil rights issue.

Of course, the factual situation which brought this issue to a head involved the so-called Philadelphia plan. Under that plan, the Department of Labor is proceeding to require contractors and subcontractors in the Philadelphia area who bid on federally assisted and Federal construction projects amounting to \$500,000 or more to commit themselves in their contracts to employ a certain percentage of minority workers.

The Comptroller General of the United States maintains that this is in violation of the 1964 Civil Rights Act, which all parties—the Department of Justice, the Labor Department, and leaders of minority groups themselves—agree prohibits setting up of racial quotas in the employment of individuals. Whether these quotas are called quotas, goals, or whatever, they remain the same; they remain quotas and are violative of the 1964 Civil Rights Act.

Under the so-called Philadelphia plan the contractors are required to submit promises in writing that they will attempt to make a good-faith effort to meet the requirements of certain goals and those goals are with respect to, I believe, six specified trades.

For example, a contractor for ironworkers would be required in the first year to increase the number of employees in the ironworkers' trade from 5 percent to 9 percent, in the second year from 11 percent to 15 percent, in the third year from 16 percent to 20 percent, and in the fourth year from 22 percent to 26 percent. This is a quota, pure and simple. Ranges are established, and the contractor or subcontractor is required to meet or to make a good-faith effort to meet at last the minimum percentage figure in the range. If the contractor fails to do

this the contract can be canceled and the contractor may be debarred from bidding on future Federal contracts.

The Comptroller General is saying this violates the 1964 Civil Rights Act and constitutes discrimination in reverse. Under the 1921 Budgeting and Accounting Act, Congress has given to the Comptroller General of the United States the authority to make determinations and to certify balances, and his determination is "final and conclusive" upon the executive departments. So, what we are trying to do here tonight is to uphold the Comptroller General of the United States, who is the agent of Congress.

I have no doubt that if this matter did not involve a factual situation which does get into the civil rights area, both Houses would have strongly upheld the action of the Comptroller General. I am sorry that it was a civil rights matter which got caught in the trap, but that is the case. We are not voting here on the issue of whether or not the Philadelphia plan is legal or illegal under the 1964 act. We are voting on a far more basic issue.

The Comptroller General maintains that the expenditure of Federal funds on Philadelphia plan type contracts would be violative of the 1964 Civil Rights Act, and his is the final and conclusive word under the law of 1921. Yet, the Labor Department is going ahead, on the instructions of the Attorney General, to extend such contracts to other major metropolitan areas.

So I think it is our duty to uphold the arm of Congress, the Comptroller General of the United States. In the view of those who have supported this legislation which we now identify as amendment 33, we are voting not on a civil rights issue but on an issue that goes to the fundamental bedrock of our republican form of government. It goes to the principle of the separation and balance of powers. I am sorry that the other body took the position it did today, but I hope there will be another day and time when we can resolve this issue and resolve it in favor of that fundamental principal of equal powers which was written into the Constitution, and which upholds the concept of three equal, and coordinate branches of Government. That is basic to our republican form of government. The issue of civil rights should not be controlling here. The issue is whether or not we are going to uphold our own agent of the Congress and, therefore, insist on the equality of the legislative branch as one of the three branches of Government.

Mr. SCOTT. Mr. President, a contractor who does not receive payment because of a disallowance by the Comptroller General may sue the Federal Government in the Court of Claims for that payment. Why can he do that? He can do that because under the Civil Rights Act he is entitled to be paid; and yet the Comptroller General might rule he could not. So this measure does not quite suit, but fosters necessary litigation.

Mr. President, I ask unanimous consent to have printed at the end of my remarks a statement on the revised Philadelphia plan.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SCOTT. Mr. President, much has been said about what this bill is all about. Well, it is about civil rights. It is about black people and white people. It is about equal opportunity. It is about the opportunity to find jobs. It is about whether the Comptroller General should exceed his powers, and, exceeding his powers have the right to pass on the Civil Rights Acts of this country in addition to the functions given him under the act of 1921.

There is something else in this bill, and that is whether we pass the continuing resolution under which a lot of Government employees are either going to be paid or not going to be paid, and it is in this bill. If we knock out this bill tonight, no way exists, short of a new continuing resolution. I do not know how we will get the House back to pass upon it. No way exists that I know of by which we could continue to make payments under the foreign aid authorization or the Labor-HEW authorization. None of these payments can be made unless this continuing resolution goes through, as it is part of this bill.

I agree this is no way to legislate. I do not think this rider has a place in this bill. I think a continuing resolution would be better off if we had done it separately. As Grover Cleveland once said, "It is a condition, not a theory that confronts us."

If we want Government employees to be paid, I do not know of any other way. If we want funds under foreign aid and HEW, there would be no other way except to pass a brandnew continuing resolution, if we can find the other body, wherever they are.

EXHIBIT 1

THE REVISED PHILADELPHIA PLAN

The revised Philadelphia Plan established by the Department of Labor has provided a significant motivation to employer, union and minority groups within a number of cities for the voluntary negotiation of an agreement by which minority individuals may be granted significant opportunity for employment within the construction industry. The discussions surrounding the negotiation of such voluntary plans as well as the implementation of those plans have provided a significant channel for civil rights tensions. It is believed that the elimination of the Philadelphia Plan would reduce the incentives for such negotiations to the detriment of minority employment opportunity.

The experience in Philadelphia with the Revised Philadelphia Plan has been excellent. The Department of Health, Education and Welfare has approved the award of 14 contracts pursuant to the Philadelphia Plan and has held a significant number of pre-bid conferences. No significant contractor or union objection to the Philadelphia Plan has been heard at such conferences or in regard to the award of any of the 14 contracts.

The present controversy between the Department of Labor (supported by the Attorney General) and the Comptroller General does not involve a dispute between Congress and the Executive Branch. Instead, the apparent controversy revolves around the interpretation of the intent of Congress in its enactment of the Civil Rights Act of 1964. The Comptroller General has interpreted that legislation in one way and the Attorney

General in another manner. Thus, the matter involves only an interpretation of the intent of Congress and in no way can be interpreted as a conflict between the Executive and Congressional Branches. Indeed, the Attorney General's opinion follows the wishes of Congress as expressed in the Civil Rights Act of 1964 as he interprets those wishes.

The conflicting interpretations of the Attorney General and the Comptroller General are most properly resolvable in the courts rather than before Congress. There exists a number of avenues for court review, for instance, a grantee of Federal funds may seek a declaratory judgment to determine whether the Revised Philadelphia Plan is legal. A contractor who does not receive payment because of a disallowance by the Comptroller General may sue the Federal Government in the Court of Claims for payment.

Mr. DODD. Mr. President, I was dismayed to learn that the Senate was forced to recede in the conference committee on my amendment to H.R. 15209, the supplemental appropriation bill, which would have given the Passport Office an additional \$310,000.

I take absolutely no issue with my colleagues in the Senate, because I know that they fought the good fight to keep the amendment in the bill. This battle was lost in the House of Representatives.

But I am grateful, in particular, for the efforts of the distinguished senior Senator from Arkansas and the distinguished senior Senator from Colorado, who I know feel strongly about this matter, as I do.

Nonetheless I am distressed, for most of us know that the primary reason for the defeat of the amendment was the fact that there are some Members of the other body who are unhappy with the Director of the Passport Office.

They have been successful to date in preventing the Passport Office from performing its duty to the American taxpayer.

I suspect they will not be satisfied until the able and efficient Director of the Passport Office has been forced to resign.

I am not telling stories out of school, for this is common knowledge. But this business must stop, because it is the American taxpayers who are suffering.

May I remind the Senate, as I did on Thursday night when I introduced my amendment, that the Passport Office brought in a profit to the Treasury of \$10.9 million in fiscal 1969.

I suspect that the Passport Office is the only agency which is operating totally in the black, and they are on the good side of the ledger to the tune of \$10.9 million.

It is shocking to me that we cannot give the Passport Office an additional \$310,000 for public service, when it is giving us \$10.9 million.

It is even more disturbing to think that while we are appropriating billions of dollars for many new programs, some of which may prove to be of questionable value, we cannot give \$310,000 to provide this service which is owed to and badly needed by the American taxpayer.

Mr. President, American citizens are forced to wait in long lines, suffer interminable delays and travel long distances in trying to obtain passports.

It is true in the States of Connecticut and Alaska.

It is true in many parts of New York and California.

It is true in Detroit.

It is true in Dallas.

It is true in Houston.

It is true in Fort Worth.

And it is going to be true in just about every part of the country once the jumbo jets and the SST provide less expensive travel possibilities for large numbers of Americans.

I shall not take any more of the Senate's time at this hour. However, Mr. President, I want to serve notice that Members of the other body will no longer be able to prevent the Passport Office from maintaining its excellent record of efficiency and service because of a personal pique.

As soon as Congress reconvenes, I intend to submit legislation which will, in effect, allow the Passport Office some fiscal autonomy. If the Passport Office is bringing in \$10.9 million worth of profit, then I shall endeavor to insure that the Passport Office will be able to use some of this profit to serve the American taxpayer.

I am informed that the Senate Appropriations Committee intends to hold hearings on this matter soon after Congress reconvenes in January.

Again, I am grateful to my colleagues in the Senate who fought so valiantly on the conference committee to sustain my amendment. I know that they will join me next year in trying to provide a permanent solution for the present passport dilemma. I look forward to their counsel and their help on this matter of concern to all Americans.

Mr. BYRD of West Virginia. Mr. President, I yield back any time I have remaining.

Mr. SCOTT. Mr. President, I yield back my remaining time.

SEVERAL SENATORS. Vote! Vote! Vote!

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, a vote "yea" is to recede?

The PRESIDING OFFICER. The Senator is correct.

Mr. SCOTT. Mr. President, a parliamentary inquiry, since I did not fully understand the Senator. A vote "yea" is to recede from the Senate wording and a vote "nay" is to continue with the Senate wording. In other words, to vote "yea" is to accept the wording of the House under amendment No. 33. Is that correct?

The PRESIDING OFFICER. A vote "yea" to recede would take the Senate language out of the bill.

All time having been yielded back, the question is on agreeing to the motion that the Senate recede from its insistence on its amendment No. 33. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. YARBOROUGH (when his name was called). On this vote I have a pair with the Senator from Connecticut (Mr.

RIBICOFF). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withhold my vote.

Mr. LONG (when his name was called). On this vote I have a pair with the Senator from Wisconsin (Mr. NELSON). If he were present and voting, he would vote "yea"; if I were at liberty to vote I would vote "nay." I withhold my vote.

Mr. MANSFIELD (after having voted in the negative). On this vote I have a pair with the distinguished Senator from Louisiana (Mr. ELLENDER). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. METCALF (after having voted in the affirmative). On this vote I have a pair with the Senator from South Carolina (Mr. HOLLINGS). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. GRAVEL (after having voted in the affirmative). On this vote I have a pair with the Senator from North Carolina (Mr. ERVIN). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mr. ELLENDER), the Senator from North Carolina (Mr. ERVIN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. McGEE), the Senator from Wisconsin (Mr. NELSON), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Georgia (Mr. RUSSELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Georgia (Mr. TALMADGE), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from New Jersey (Mr. CASE), the Senator from Kentucky (Mr. COOK), the Senator from New Hampshire (Mr. COTTON), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. MURPHY), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Kentucky (Mr. COOPER) is absent because of illness in his family.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kansas (Mr. PEARSON), and the Senator from Ohio (Mr. SAXBE) are detained on official business.

If present and voting, the Senator from New Jersey (Mr. CASE) would vote "yea."

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Colorado (Mr. ALLOTT). If present and voting, the Senator from Oregon would vote "yea," and the Senator from Colorado would vote "nay."

The result was announced—yeas 39, nays 29, as follows:

[No. 274 Leg.]

YEAS—39

Aiken	Hart	Montoya
Bayh	Hartke	Moss
Bellmon	Hughes	Muskie
Bennett	Inouye	Packwood
Boggs	Jackson	Pastore
Brooke	Javits	Pell
Church	Kennedy	Percy
Cranston	Magnuson	Prouty
Dodd	Mathias	Schweiker
Eagleton	McGovern	Scott
Goodell	McIntyre	Smith, Ill.
Griffin	Miller	Tydings
Harris	Mondale	Williams, N.J.

NAYS—29

Allen	Fannin	Proxmire
Baker	Fulbright	Randolph
Bible	Gore	Smith, Maine
Burdick	Gurney	Sparkman
Byrd, Va.	Hansen	Spong
Byrd, W. Va.	Holland	Stennis
Cannon	Hruska	Thurmond
Curtis	Jordan, N.C.	Williams, Del.
Dole	Jordan, Idaho	Young, N. Dak.
Dominick	McClellan	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—5

Yarborough, against.
Long, against.
Mansfield, for.
Metcalfe, for.
Gravel, for.

NOT VOTING—27

Allott	Fong	Pearson
Anderson	Goldwater	Ribicoff
Case	Hatfield	Russell
Cook	Hollings	Saxbe
Cooper	McCarthy	Stevens
Cotton	McGee	Symington
Eastland	Mundt	Talmadge
Ellender	Murphy	Tower
Ervin	Nelson	Young, Ohio

So the motion that the Senate recede from its insistence on its amendment No. 33 was agreed to.

Mr. SCOTT. Mr. President, I move to reconsider the vote just taken.

Mr. GRIFFIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, have we disposed of the conference report?

The VICE PRESIDENT. That completes action on the conference report.

URBAN MASS TRANSPORTATION ACT OF 1969—REPORT OF A COMMITTEE—INDIVIDUAL VIEWS (S. REPT. NO. 91-633)

Mr. WILLIAMS of New Jersey. Mr. President, from the Committee on Banking and Currency, I report favorably, with amendments, the bill (S. 3154) to provide long-term financing for expanded urban public transportation programs, and for other purposes. I ask unanimous consent that the report be printed, together with the individual views of the Senator from Wisconsin (Mr. PROXMIRE), the Senator from California (Mr. CRANSTON), and the Senator from New York (Mr. GOODELL).

The PRESIDING OFFICER. The report will be received and the bill will be placed on the calendar; and, without objection, the report will be printed, as requested by the Senator from New Jersey.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. DOMINICK (for himself, Mr. JAVITS, and Mr. SMITH of Illinois):

S. 3297. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish a code system for the identification of prescription drugs, and for other purposes; to the Committee on Labor and Public Welfare.

(The remarks of Mr. DOMINICK when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. KENNEDY:

S. 3298. A bill to protect consumers and to assist the commercial fishing industry by providing for the inspection of establishments processing fish and fishery products in commerce, and to amend the Fish and Wildlife Act of 1956 to provide technical and financial assistance to the commercial fishing industry in meeting such requirements; to the Committee on Commerce.

S. 3299. A bill to amend the Social Security Act to provide a 15-percent across-the-board increase in monthly benefits with a minimum primary insurance amount of \$100; to the Committee on Finance.

S. 3300. A bill to establish the birthplace of Susan B. Anthony in Adams, Mass., as a national historic site, and for other purposes; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. KENNEDY when he introduced the bills appear later in the RECORD under the appropriate headings.)

By Mr. HARRIS:

S. 3301. A bill to amend title 5, United States Code, to include as creditable service for civil service retirement purposes service as an enrollee of the Civilian Conservation Corps, and for other purposes; to the Committee on Post Office and Civil Service.

S. 3297—INTRODUCTION OF A BILL TO BE KNOWN AS THE "DRUG IDENTIFICATION ACT OF 1969"

Mr. DOMINICK. Mr. President, I introduce, on behalf of myself and the senior Senator from New York (Mr. JAVITS), who is the ranking minority member of the Committee on Labor and Public Welfare, the administration bill to amend the Federal Food, Drug, and Cosmetic Act to establish a code system for the identification of prescription drugs and which may be cited by the short title, "Drug Identification Act of 1969." Cosponsoring the bill with the Senator from New York and myself is the Senator from Illinois (Mr. SMITH).

The present labeling provisions of the Federal Food, Drug, and Cosmetic Act relating to the identification of drug products and their production or distribution origin do not require that this information be shown directly on the tablets or capsules of drugs marketed in these forms. Thus, in case of personal emergency, such as overdose or accidental ingestion of a drug, identification may be seriously delayed and may require elaborate and time-consuming laboratory analysis. A quick identification of the drug in such emergencies, by labeling and direct product coding, could facilitate prompt and appropriate medical treatment. A uniform drug coding system to identify drug manufacturers and distributors would also be of great value to the Department of Health, Education,

products) of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out "9/30/69" and inserting in lieu thereof "9/30/72".

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of enactment of this Act.

(c) Upon request therefor filed with the Collector of Customs concerned on or before the one hundred twentieth day after the date of enactment of this Act, all articles classified under items 470.23, 470.25, 470.55, 470.57, and 470.65 in the Tariff Schedules of the United States Annotated entered into the United States or withdrawn from warehouse for consumption on or after October 1, 1969, shall be liquidated or relinquished as if such articles had been free of duty at the time of such entry or withdrawal.

With the following committee amendment:

Strike out all after the enacting clause and insert:

"That item 907.80 of the appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out "9/30/69" and inserting in lieu thereof "9/30/72".

"SEC. 2. (a) The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date of the enactment of this Act.

"(b) Upon request therefor filed with the customs officer concerned on or before the one hundred and twentieth day after the date of the enactment of this Act, the entry or withdrawal of any article—

"(1) which was made after October 1, 1969, and on or before the date of the enactment of this Act, and

"(2) with respect to which there would be no duty if the amendment made by the first section of this Act applied to such entry or withdrawal,

shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 or any other provision of law, be liquidated or relinquished as though such entry or withdrawal had been made on the day after the date of the enactment of this Act."

Mr. MILLS (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read, and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time and passed.

The title was amended so as to read: "A bill to extend for three years the period during which certain dyeing and tanning materials may be imported free of duty."

A motion to reconsider was laid on the table.

EXTENSION OF DATE FOR TRANSMISSION TO THE CONGRESS OF THE PRESIDENT'S ECONOMIC REPORT AND THE REPORT OF THE JOINT ECONOMIC COMMITTEE

Mr. PATMAN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the joint resolution (H.J. Res. 1040) extending the time for filing the Economic Report and the report of the Joint Economic Committee.

The Clerk read the title of the joint resolution.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. GERALD R. FORD. Mr. Speaker, reserving the right to object, and I do not intend to object, am I correct in the statement that the proposed action is only for the purpose of adjusting the time for the sending up of the President's Economic Report and the filing of the report by the Joint Economic Committee at later dates because of the January 19th date for the reconvening of the second session of the 91st Congress?

Mr. PATMAN. The gentleman is correct. I have discussed it with the gentleman in advance, of course. The Economic Report is due on January 20, and the joint resolution would make the date February 2. The report of the Joint Economic Committee is due on March 1. We are making it April 1 under this resolution.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Iowa.

Mr. GROSS. I suppose it is understandable that there should be a delay, for the longer it is delayed, the longer the bad news will be withheld from the public. The Economic Report will show how deep in the mire of debt this Nation is. Last year's report showed the country to have 1 trillion 500 and some-odd billion dollars of debt, public and private. So I suppose the longer it is delayed the better some people will feel about it.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There being no objection, the clerk read the joint resolution as follows:

H.J. RES. 1040

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) notwithstanding the provisions of section 3 of the Act of February 20, 1946, as amended (15 U.S.C. 1022), the President shall transmit to the Congress not later than February 2, 1970, the Economic Report; and (b) notwithstanding the provisions of clause (3) of section 5(b) of the Act of February 20, 1946 (15 U.S.C. 1024(b)), the Joint Economic Committee shall file its report on the President's Economic Report with the House of Representatives and the Senate not later than April 1, 1970.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 15149, FOREIGN ASSISTANCE APPROPRIATIONS, 1970

Mr. PASSMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the further conference asked by the Senate.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

Mr. CONTE. Mr. Speaker, reserving the right to object, I have tried on two occasions to knock down the appropriation of \$54.5 million for jets to China. When we debated the aid bill on December 9, I fought to completely delete these funds. However, when we debated the conference bill on December 20, I simply called for the deletion of the specific earmarking of funds. I did not call for a reduction in the total military assistance appropriation. And on this effort, I was pleased to have 135 of my colleagues go along with me.

I am very pleased that the other body has knocked down this item. We should have also because the way this request was initiated raises some very serious questions. I want to see these questions answered before going ahead with jets for China—and specifically, I want someone to explain to me why China needs them. And I want explanation where I have the opportunity to follow it up with questions. That is all I am asking, that we go through the regular processes of Government and not through any surprise maneuvers on the floor.

The situation now, Mr. Speaker, is that a new conference must be called and conferees must be appointed. I do not intend to object at this time. However, I want it clearly understood that I reserve the right to object. Although I do not plan to move to instruct the conferees, I also do not plan to abrogate my right to question their recommendation on these jets.

I am hopeful that we can work this out in conference. I am confident that an effort in this direction will be made by all parties concerned.

I also realize that it is very, very late in the session, and that the aid bill will not come up until we reconvene in January.

In view of all this, I am reserving my objections at this time. But I want to make it clear that I plan to fight on in January if this money remains in the conference bill for China.

In the meantime, I hope that my colleagues will take a good hard look at just what has happened with these China jets.

I have said many times that something is fishy. I know some of my colleagues agree with me. This being the case, I think we should resolve this conflict in favor of the American people and the great trust they put in this body. Let us look the request over, talk with Secretary Laird, Secretary Rogers, and Dr. Hannah, and see what the story is. Then we can act.

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

The SPEAKER. Is there objection to the request of the gentleman from Louisiana? The Chair hears none, and appoints the following conferees: Messrs. PASSMAN and ROONEY of New York, Mrs. HANSEN of Washington, Messrs. COHELAN, LONG of Maryland, McFALL, MAHON, SHRIVER, and CONTE, Mrs. REID of Illinois, and Messrs. RIEGLE and Bow.

Mr. PASSMAN. Mr. Speaker, I question that few times, if ever, in the history of the Congress could we find such an affirmative record in such a short period of time in support of any item as that record supporting military assistance for our staunch and dependable ally, the Republic of China.

There have been 10 separate and distinct votes on this matter, either on this floor, in the Committee on Appropriations, or the conference sustaining the belief that it was a "must" to provide funds for our proven friend, the Republic of China. The table below shows the voting record on this amendment.

HISTORY OF FUNDS FOR REPUBLIC OF CHINA IN
HOUSE OF REPRESENTATIVES

	Yeas	Nays
Authorization bill (H.R. 14580):		
Nov. 20, 1969—Adopted Sikes amendment to include \$54,500,000,000 for China	176	170
Nov. 20, 1969—Final passage including China funds	176	163
Appropriations bill (H.R. 15149):		
Dec. 3, 1969—Subcommittee—Motion to include \$54,500,000,000 for China	8	4
Dec. 8, 1969—Full committee—Motion to delete China funds	11	21
Dec. 9, 1969:		
House floor—Motion to retain \$54,500,000,000 for China (Broomfield substitute for Conte motion to delete)	250	142
Final passage, including China funds	200	195
Dec. 19, 1969—Conference action—agreement to retain China funds:		
House conferees	9	3
Senate conferees	8	0
Dec. 20, 1969—House action on conference report:		
Conte Motion to recommit deleting China funds	137	220
House adopted conference report including China funds	181	174

Mr. Speaker, may I assure the Members of this House that I have not and will not enter into any agreement that would pull the rug out from under those who believe that right should, and will prevail, notwithstanding the fact that there are those who insist on their way whether it is sustained with facts or not.

Mr. Speaker, for my part, I shall return to conference as quickly as possible and endeavor to sustain the will and position of this body which has expressed itself so forcefully and so often so recently. As of today no agreement has been reached between the Senator from Wyoming and myself as to when the next meeting of the conference committee will take place, statements made to the contrary notwithstanding.

(Mr. PASSMAN asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

CONFERENCE REPORT ON H.R. 15209, SUPPLEMENTAL APPROPRIATIONS (H. DOC. NO. 91-208)

Mr. MAHON. Mr. Speaker, I call up the conference report on the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentlemen from Texas?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of December 20, 1969.)

Mr. MAHON (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement of the managers on the part of the House be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. MACGREGOR. Mr. Speaker, reserving the right to object—and I will not object—I would like to ask the chairman of the Committee on Appropriations, since I glanced at the conference report quickly and found no reference therein to the so-called Philadelphia plan, the rider adopted by the Senate, will the chairman call to our attention where in the report of in the statement of the managers on the part of the House we might find reference to the Philadelphia plan rider?

Mr. MAHON. Mr. Speaker, if the gentleman will yield, because of a technicality the conference agreement is not incorporated in the conference report. On page 6 of the report it is stated: "Amendment No. 33: Reported in technical disagreement."

But agreement was reached, and that agreement is to move to recede from disagreement and concur in the Senate amendment. The matter will be before us when we take up the amendments reported in technical disagreement.

Mr. MACGREGOR. Mr. Speaker, may we then expect the chairman of the Committee on Appropriations to discuss the issue of the Philadelphia plan in some detail?

Mr. MAHON. I plan to discuss the issue of what is involved when I offer the motion to recede and concur.

Mr. MACGREGOR. Mr. Speaker, I thank the chairman of the committee and withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

SUMMARY OF THE CONFERENCE BILL

Mr. MAHON. Mr. Speaker, the supplemental appropriation bill for the fiscal year 1970 has passed both bodies, has been agreed to in conference, and the conference report is now before the House.

This report provides a total of \$278 million-plus. The great bulk of the funds provided in this bill relate to the small business disaster loans required as a result of Hurricane Camille and otherwise. There are additional funds in the bill to which reference should be made, because many Members are interested in them.

The final action has not been taken toward the enactment of the mine safety bill. It has not been signed into law, but we provide in this report today for mine safety \$22 million, contingent, of

course, upon the approval of the authorization.

We provide \$1.8 million for weather facilities on the east coast growing out of recommendations that came as a result of the hurricane.

We provide \$4 million for Secret Service police protection for embassies in the District of Columbia.

We provide for a continuing resolution which would continue funds for any agency of the Government for which appropriations have not been provided at the time of the adjournment of Congress.

There is a provision relating to what is commonly known as the Philadelphia plan. This is somewhat of a misnomer, because the Philadelphia plan is in no way mentioned in the bill.

We provide, for claims, the additional sum of \$530,000 for additional claims and judgments which were sent to the Senate.

I do not believe there is any real controversy about this conference report. I do not plan to belabor the issue, because I know that Members want to get to the subject of the impending controversy.

I have been advised by the minority, by the gentleman from Michigan (Mr. GERALD R. FORD), and my counterpart, the gentleman from Ohio (Mr. BOW), that some reference will be made to the so-called Philadelphia plan, and that a motion will be made to delete the language approved by the Senate which will be before us on a special motion which I shall offer.

Mr. Speaker, the Philadelphia plan is by no means and to no extent the actual issue involved here. The issue involved is the integrity of the House of Representatives. The issue involved is the stature of the House of Representatives and the Congress.

There has been a lot of talk about the erosion of the power of the legislative branch. Most of us have not agreed that such erosion has taken place; but we have to acknowledge that the courts, by overstepping themselves in some instances, and the Executive, by speaking with one voice and having an advantage when it comes to presenting an image to the American people, have done rather well in promoting their power in this country.

An effort will be made to reduce the power of the Congress during the course of this debate, and I shall not be in favor of reducing the power of the Congress and denying the Comptroller General, who is the creature of the Congress, the authority which he has had since 1921, when the office was created, to be the final arbiter as to the legality of Federal expenditures.

In other words, the issue here is the power of the Congress over the Federal purse. I believe we should retain that power unrestrained and unsullied by any action on the part of the executive branch.

Many of us have served here with a number of Speakers. I remember serving with Joe BYRNS of Tennessee, with Bill BANKHEAD of Alabama, with Sam RAYBURN of Texas, and Joe MARTIN of Massachusetts, and with JOHN McCORMACK.

These men have held somewhat different views in many ways, but in one respect they have all been alike. They have all had a passionate desire to uphold the dignity and power of the House of Representatives and the U.S. Congress. That position is being or will be challenged here today.

Can you not close your eyes and hear Sam Rayburn or some other Speaker of the past, or the present Speaker, saying how much he loved the House and how jealous he was of the prerogatives of the House? Well, that is the true issue involved here.

Now, if you would turn to the Senate version of the bill or get a copy of the statement which is available on the committee table here, you will see precisely what is in the bill and you will see why I say that the Philadelphia plan is not the issue.

Here is the section in the bill that others want to knock out. I am going to make a motion that we retain it in the bill. It was hard fought in the Senate and adopted by a strong vote. Here is what the provision I shall move that we approve provides:

SEC. 1004. In view of and in confirmation of the authority invested in the Comptroller General of the United States—

And the Comptroller General of the United States is our lawyer, the lawyer of the House of Representatives—

by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated—

Here is what we say—

no part of the funds appropriated or otherwise made available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute.

Under the provision, the executive branch cannot legally pay out money if it is in contravention of the law, and the man holding sole authority in making that determination—although, of course, the courts can be appealed to, the man with sole authority in that field is the Comptroller General of the United States.

Now continuing with the quote:

Provided, That this section shall not be construed as affecting or limiting in any way the jurisdiction or the scope of judicial review of any Federal court in connection with the Budget and Accounting Act of 1921, as amended, or any other Federal law.

That is the provision we shall be voting on here. It is the question as to whether or not the Comptroller General of the United States will be the sole arbiter in matters involving expenditures and as a representative of the Congress determine whether or not moneys appropriated by the Congress are expended out of the Treasury in a legal manner. It is just that simple.

This is not a civil rights issue at all.

It is not a Philadelphia plan issue at all.

It is simply, as I stated, a question of the power, the authority, the position, and the prestige of the Congress.

Before 1921, when we set up the Budget and Accounting Act, and when we established the office of the Comptroller General to be our spokesman in the regard, there was a Comptroller of the Treasury, and the executive branch, had the final determination, but it was thought that a more or less independent agency not amenable to the Executive and more amenable to the Congress should have the final determination and should be the final arbiter of the legality of funds paid out of the Federal Treasury.

This is the Budget and Accounting Act of 1921, and it says:

Balances certified by the General Accounting Office upon the settlement of public accounts—

And when the public accounts are settled is when you have to pay—

shall be final and conclusive upon the Executive Branch of the Government.

Now, the question of the finality of the determinations of the Comptroller General's decisions arose during the debate back in 1921 when this law was adopted.

Chairman Good at that time said that if he—meaning the Comptroller General—is allowed to have his decisions modified or changed by the will of an executive, then we might as well abolish the office.

He was chairman of the committee that brought in the bill creating the office of Comptroller General. He was chairman of the Committee on Appropriations.

As chairman of the Committee on Appropriations today, I say if we did not allow our lawyer, our spokesman, the Comptroller General of the United States, the authority to determine whether or not funds appropriated by Congress shall be paid out, then we might as well abolish the General Accounting Office.

Mr. Good also observed:

There ought to be an independent body, independent of the executives, with an official who could say, "This appropriation can or cannot be used for this purpose."

And certainly that is true today.

We have a man with a 15-year appointment, not a Democrat, not a Republican, not an independent, but the spokesman and the representative of all of us in determining the power of the purpose as to the paying out of Federal money.

So, that is the problem. How did we get into the civil rights question? The Comptroller General has held that the so-called Philadelphia plan contravenes the law of the country and, therefore, he supports the position which I have expressed to you with respect to this matter.

Mr. ECKHARDT. Mr. Speaker, will the gentleman yield?

Mr. MAHON. Let me proceed for a few moments and then I shall be glad to yield to the gentleman.

Here is what the Civil Rights Act of 1964 says, and the Comptroller General must not permit money to be paid out when in violation of that law or any other law:

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint

labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area. (Italics added.)

If Congress wanted to change the law and permit the establishment of quotas with respect to those who draw Federal moneys on a contract with the Government, that would be something that the Congress could do. But that is not the law at the present time.

I hasten to say that I believe the people who receive contracts from the U.S. Government ought to give fair consideration to all people and to all elements of labor seeking to work. I believe that there should be no discrimination against a man because of his religion, and no discrimination because of race or color, and no discrimination because of sex. This is a principle on which I think we can all agree. So, we are not confronted with the question of whether or not we believe in a policy of fairness and non-discrimination. We do believe in a policy of fairness and we do not believe in discrimination. But we simply say that the law of the land should be upheld until changed by due process and should not be brushed aside.

No official of the Government should be able to brush aside the law of the land. No one should be given the privilege of thwarting the law of the land which provides that the final decision insofar as the expenditure of Federal moneys is concerned rests with the Comptroller General of the United States who serves for a 15-year term.

Mr. PUCINSKI. Mr. Speaker, will the gentleman yield?

Mr. MAHON. I yield to the gentleman from Illinois.

Mr. PUCINSKI. Mr. Speaker, I would like to congratulate the gentleman from Texas for making one of the most important pronouncements on the floor of the House this year, and I want to further congratulate the gentleman for putting this whole issue into its proper perspective. We have all been reading about the Philadelphia plan. The Philadelphia plan is a smoke screen. The gentleman has quite properly put before this House what the issue is. The issue is whether or not our Attorney, and the General Accounting Office, is going to have the right to advise us as Members of the Congress, on the legality of actions of the executive branch of the Government.

This is one of the most brazen power grabs you have ever been confronted with. The Secretary of Labor, when he comes before Congress and the people,

raising the question of the Philadelphia plan, is raising a strawman.

The fact of the matter is—

Mr. MAHON. Mr. Speaker, I cannot yield further.

Mr. PUCINSKI. Mr. Speaker, if the gentleman will yield just a moment further so that I may quote a paragraph, because I think it spells out what the gentleman has been trying to tell us. It is on page S17199, the RECORD of December 18, in a series of questions and answers:

Question: Just what did the Attorney General say which conflicts with the authority of the Comptroller General?

And the answer is exactly as the chairman said:

Answer: The Attorney General, in an opinion to the Secretary of Labor, not only upheld the action of the Secretary of Labor but went on to say, and I quote:

"I hardly need to add that the conclusions expressed herein may be relied on by your Department and other contracting agencies and their accountable officers in the administration of Executive Order No. 11246."

This, in effect, tells the agencies to ignore the opinion of the Comptroller General. Now, where will this lead? If this position is allowed to stand, it will be used in other cases, and Congress might as well forget about trying to exercise its Constitutional authority.

That is what the gentleman from Texas is trying to tell us.

Mr. MAHON. Mr. Speaker, I thank the gentleman for his remarks.

The issue is very clear. I do not know all there is to be known about the Philadelphia plan, and for the purposes of this discussion that is not important. The only thing that is important, as I see it, is whether or not the House is willing to stand on its two feet and protect itself and the prerogatives of Congress. It is up to us to make that determination.

I would think that we would not want to adjourn this Congress with an action which in any way militates against our constitutional powers to any branch of the Government—and I would quote from Holy Writ, the King James Version:

If any provide not for his own and especially for those of his own house, he hath denied the faith and is worse than an infidel.

Now, in the Standard Version, there is a slight modification:

But if any man provideth not for his own, and especially for his own household, he hath denied the faith, and is worse than an unbeliever.

I believe that we are believers in the House of Representatives, and in our prerogatives, and in the carrying out of our duties, and in our oath of office. And I hope that the Members of the Congress will stand up and be counted, not on the Philadelphia plan, but on the issue of whether we shall maintain the power and the prestige of the U.S. Congress or let it slip away, and let one of the strong points of our Government be destroyed.

Mr. FRASER. Mr. Speaker, will the gentleman yield?

Mr. MAHON. Mr. Speaker, how much time have I used?

The SPEAKER pro tempore. The gentleman has consumed 21 minutes.

Mr. MAHON. I have promised to yield a great deal of time but I yield briefly to the gentleman, but not for a speech.

Mr. FRASER. No, no—I just want to ask the chairman a question or two.

Does section 1004 which the chairman wants us to agree to add anything to existing law?

Mr. MAHON. Does it add to existing law?

Mr. FRASER. Yes.

Mr. MAHON. It does not add, I believe, significantly to existing law. I think it just recites and clarifies the existing law.

Mr. FRASER. But this is important.

Mr. MAHON. The Comptroller General's decision has been overridden by the executive branch. This is an effort to make clear just what the position of the Congress is with respect to this issue.

Mr. FRASER. Would the chairman agree that it has been the position of the Congress that the Comptroller General's opinion should prevail? Has that not been the past position of the Congress?

Mr. MAHON. With respect to the use of Federal funds?

Mr. FRASER. In matters dealing with the use of funds.

Mr. MAHON. Decisions on the use of Federal funds are up to the Comptroller General, and he is the sole arbiter for the paying out of funds.

Mr. FRASER. That is our view of the present law?

Mr. MAHON. That is our view.

Mr. FRASER. My question is does section 1004 add anything to that law?

Mr. MAHON. The gentleman can be his own judge of that.

Mr. FRASER. Will the chairman advise us as to whether or not we are making a substantive change in the law or not? Does the chairman have a position on that question? Are we changing the law or are we here simply restating it?

Mr. MAHON. We are restating it and reaffirming it and to some extent clarifying the law enacted in 1921.

Mr. FRASER. I would just say to the chairman if we are expanding the law today as a rider on an appropriation bill without hearings and without Congress inquiring into the nature of the contest that has developed between the Comptroller General and the Attorney General it does not seem to me to be a very fruitful way to legislate. I wonder what the chairman says about that.

Mr. MAHON. I will say that whenever the U.S. Congress is attacked I believe in standing like Horatio at the bridge and saying, "They shall not pass."

The SPEAKER pro tempore. The gentleman from Texas has consumed 23 minutes.

Mr. MAHON. Mr. Speaker, I yield 10 minutes to the gentleman from Ohio (Mr. Bow).

(Mr. BOW asked and was given permission to revise and extend his remarks.)

Mr. BOW. Mr. Speaker, this a question of civil rights. There is no question but that this rider, which has been placed on this appropriation bill, has been for one purpose and that is to destroy the Philadelphia plan.

On the question of whether the Comptroller General should completely control the spending of this House, may I point out that the Comptroller General is appointed for 15 years. He is not a lawyer, and it seems to me that what the House is doing—if we follow the advice of my distinguished friend, the gentleman from Texas and chairman of my committee—is delegating to a nonelected czar with a term of 15 years the opportunity to cancel anything that we may think is right; and that includes the Philadelphia plan.

Now, I have talked to a number of Members and they all say to me, "What is the Philadelphia plan?" So I believe my contribution in this debate should be to discuss, to a certain extent, the Philadelphia plan.

I definitely believe the Philadelphia plan is a question of civil rights, and the question concerns a group of people who want to maintain complete control of labor and want to dictate who may and may not work.

The revised Philadelphia plan sets forth ranges for minority manpower utilization on federally involved construction projects. These ranges are expressed for six designated trades—ironworkers, sheetmetal workers, electricians, plumbers and pipefitters, steamfitters, and elevator construction workers—which have less than 2 percent minority membership. The ranges are based on a realistic evaluation of existing labor force factors in Philadelphia and were issued on September 23, 1969.

To be eligible for award, a contractor must include in his bid a goal for the utilization of minority persons in the designated trades which meets these standards. If he fails to submit a goal or his goal does not meet the established standards the contractors' bid will be rejected as nonresponsive. If a contractor meets his goals he will be presumed in compliance. However, if he fails, he will not automatically be in noncompliance with his obligations under the plan and Executive Order 11246. All that is required is a "good faith" effort to satisfy his goals. The plan specifies criteria for the measurement of "good faith" which include among others efforts by the contractor to broaden his recruitment base by soliciting employment applicants from known sources of minority workers and from training programs established within the Philadelphia area.

Numerous questions have arisen in the months since the revised Philadelphia plan was issued concerning the authority of the Department of Labor to take such action. Thus, a brief review of the Department's position regarding the revised plan seems in order here.

The authority of the President to issue Executive orders requiring fair employment practices by Government contractors has been exercised for more than 28 years. Since 1941 Presidents have issued Executive orders requiring equal employment opportunity of those persons doing business with the Federal Government and the validity of these Executive orders has been upheld by opinions of the Attorney General, the Comptroller General and several courts

which have dealt with that issue. This authority derives from the right of the Government to decide with whom and upon what conditions it will do business. Indeed, under the reasoning of certain cases, Federal contracts or assistance to private employers who discriminate would amount to unconstitutional, discrimination by the Government.

The passage of the Civil Rights Act of 1964 did not deprive the President of his authority nor relieve him of his responsibility to achieve equal employment opportunity among government contractors. Far from the Executive order or the Civil Rights Act frustrating the purposes of one another, the objective of both is equality of employment opportunity for all Americans, and the procedures of one law complement the procedures of the other.

Executive Order 11246 imposes more than a duty not to discriminate. It requires "affirmative action" to insure equal employment opportunity for minority groups. The Congress recognized this separate obligation when it enacted title VII of the 1964 Civil Rights Act. The legislative history and the statutory language of that act, and several court decisions make manifestly clear the fact that title VII was not intended as a general mandate to replace all laws and actions of the Executive to achieve the goal of equal job opportunity.

In the construction industry, special measures are required to implement the "affirmative action" requirements of Executive Order 11246 and to overcome the effects of past discrimination in the designated trades. This is so because:

First. Contractors rely upon labor unions as their source of labor supply; and

Second. Contractors often hire a new employee labor complement for each job.

In order to achieve equal employment opportunity in the construction trades it is necessary, therefore, to require that bidders on Federally-involved construction projects commit themselves to "goals" of minority manpower utilization.

Allegations have been made that the revised Philadelphia plan sets required quotas for the hiring of minorities and, as such, contravenes title VII of the Civil Rights Act of 1964 and Executive Order 11246.

Initially, I believe it is important to understand that the plan does not require, nor does it allow, discriminatory hiring practices as implied by the use of the word "quota." Instead, the plan establishes a range of desirable hiring within which the contractor must set his goal. To emphasize the point that there is no magic in these numbers or percentages in established ranges and allowed the contractors to set their own hiring goals within these ranges. Furthermore, it does not require that such goals be met but rather that the government contractor make every good faith effort to meet those goals. Thus, what is required is what any effective business, government or other organization requires of itself; the establishment of goals for achievement and the requirement of a good faith, but lawful effort to meet those goals.

Of course, no one contends that the ranges and goals as well as the contractor's good faith efforts are to be defined in a color vacuum. But, as stated by the Attorney General, title VII does not prohibit and the Executive order may require encouraging the employment of members of minority groups.

It is not intended by this plan to hold any contractor responsible for the exclusionary practices of any union or unions. That responsibility rests upon the union itself.

However, under the Executive order, contractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in federally involved contracts. To the extent that they have delegated the responsibility for some of their employment practices to another organization or agency which prevents them from providing equal employment opportunity, they cannot be considered in compliance with the Executive order. Otherwise, the affirmative action obligation might be nullified particularly in the construction industry.

Again, I wish to emphasize that what the Philadelphia plan "requires" of a contractor in that area is a good faith effort. He is required to broaden his recruitment base, and thus the size and makeup of the pool of available employees, by informing minority recruitment organizations and training programs that he is willing to hire minority group persons and by urging these sources to refer minorities to him for employment. A review of the availability of minority manpower in the area has been made, and it has been determined that recruitment efforts as described above should produce minority applicants for employment in sufficient numbers that a contractor may satisfy his goal of minority employment as a matter of course.

In conclusion, Mr. Speaker, I emphasize the Philadelphia plan does not set quotas, it establishes goals. But again I say, as the gentleman from Minnesota (Mr. FRASER) has said, this is not the place—as a rider on the last appropriation bill to come before this Congress—to include this language. It is very evident, whatever may be said, that there was only one reason why this rider was included in this bill. That reason was to stop the Philadelphia plan and prevent equal employment opportunities in the city of Philadelphia, where it has been denied over the years. There can be no question about this.

When the time comes, when the gentleman from Texas and chairman of the committee, offers a motion to recede and concur with the Senate amendment, I shall ask for a rollcall vote. In order to defeat this motion, the vote, of course, should be "No." I hope the Members of this body will vote "No."

Mr. MAHON. Mr. Speaker, I yield 10 minutes to the gentleman from Michigan (Mr. GERALD R. FORD), the minority leader.

(Mr. GERALD R. FORD asked and was given permission to revise and extend his remarks.)

Mr. GERALD R. FORD. Mr. Speaker,

I think it is important to understand as clearly as possible the parliamentary situation. We have before us a conference report on the Supplemental Appropriations Act for 1970. We are now debating the conference report, and at the conclusion of this 1 hour, there will be a motion made to approve the conference report. I intend to vote for the conference report on the Supplemental Appropriations Act for 1970. We are now debating the conference report, and at the conclusion of this 1 hour, there will be a motion made to approve the conference report. I repeat, I intend to vote for the conference report.

I think it is immaterial whether we win or lose on the conference report on the basic issue which has just been discussed by the chairman and by the ranking minority member of the Committee on Appropriations.

However, subsequent to the consideration of the conference report, there will be a number of motions made by the distinguished chairman of the Committee on Appropriations, the gentleman from Texas (Mr. MAHON). On amendment No. 33, the test will come. At that point, the gentleman from Texas will move to recede and accept the Senate amendment which involves the Philadelphia plan. At that time it is possible for additional debate on the specifics involving this issue, which is the Senate rider. As I understand it, the gentleman from Texas has agreed when that point comes, if there is a desire, we can have and will have more debate on this equal job opportunity issue.

The history of the appropriation bill is that we passed the supplemental. It then went to the other body, and they incorporated amendment No. 33.

The gentleman from Texas has indicated that the issue on amendment No. 33 is not civil rights, but the issue is the power of the purse, or to put it another way will or will not Congress lose that power if amendment No. 33 prevails. Before discussing that I should like to indicate for the benefit of the membership some of the support which is coming for the action the gentleman from Ohio (Mr. Bow) and I are advocating. We hope there will be a "no" vote—a "no" vote—at the time the gentleman from Texas moves to recede and concur in the Senate amendment.

Let me read a communication received today from Mr. Steven Horn, the Vice Chairman of the U.S. Commission on Civil Rights. I might say parenthetically here, he intended to refer to the supplemental. It reads as follows:

On behalf of Father Theodore M. Hesburgh, Chairman, and the other members of the U.S. Commission on Civil Rights, I urge the defeat of the Senate rider on the HEW-Labor appropriations bill which would destroy the Philadelphia Plan. In the judgment of the Commission, the Philadelphia Plan not only is an appropriate exercise of the contracting power of the executive branch but is required by the Constitution as well. To frustrate the Philadelphia Plan would interfere with the Constitutional duty of the federal government to guarantee equal employment opportunity in fact in all contracts entered into by the government. The plan represents a major breakthrough in opening skilled and high-paying jobs to members of minority

groups. It has great potential and must be continued.

STEVEN HORN,
Vice Chairman.

Of course, the Secretary of Labor has been working hard to make the Philadelphia plan work. He is vigorously opposed to the Senate rider on the appropriation bill:

STATEMENT BY SECRETARY SHULTZ

The country's long-established commitment to—and affirmative action for—equal job opportunity have been gravely jeopardized by the United States Senate and by the Senate-House conferees.

This blow against social justice started with a rider attached to a supplemental appropriations bill by the Senate Appropriations Committee last Wednesday night. This drastic legislation was proposed without even the procedure of a public hearing.

The rider is part of an effort by some unions in the construction trades, and supported vigorously by lobbyists for the AFL-CIO, to block affirmative steps to open skilled and high-paying jobs to black and other minority people.

I call attention to the impending vote on this bill in the House of Representatives. I hope it will be done on the record—by roll call vote—so all Americans can know whether or not each Member stands with the President for equal job opportunity.

I trust the House Members will vote to open construction and all other jobs to all. Let us continue the struggle for fairness and justice in job opportunity. And let us get on with the job of building a good society as well as the homes, factories, schools and other structures so desperately needed.

The President of the United States has issued two strong statements urging the defeat of the Senate rider on the appropriation bill.

STATEMENT BY THE PRESIDENT

The House of Representatives now faces an historic and critical civil rights vote.

Tucked into the supplemental appropriations conference report is a provision vesting the Comptroller General a new quasi-judicial role. The first effect of this proposal will be to kill the "Philadelphia Plan" effort of this Administration to open up the building trades to non-white citizens. It is argued that the Administration seeks to restrict the role of the General Accounting Office and the Comptroller General. This is a false issue.

I wish to assure the Congress and the public of this nation that I consider the independence of the Comptroller General of the United States of the utmost importance is the separation of powers in our federal system. The amendment now under discussion by the Congress will not and should not be permitted to bring this principle into any doubt.

Of course, in the conduct of his independent review of all Executive actions, the Comptroller General may raise, and has often raised, questions about the legality of federal contracts and whether funds, according to the law, should be spent under such contracts. The Executive has always, will always, give the fullest attention to his recommendations and his rulings.

When rulings differ, however, when the chief legal officer of the Executive Branch and the chief watchdog of the Congress end up with opposing views on the same matter of law, the place for resolution of such differences, is the courts—just as it is for the resolution of differences between private citizens.

The amendment as presently written makes a court review extremely difficult, even questionable. For example, fourteen contracts have been let under the Philadelphia Plan. If the amendment passes, these con-

tracts will have to be cancelled. If the contractors should not elect to sue, the Executive Branch of the Federal Government could not—and the matter would not reach the courts unless a member of my Cabinet were intentionally to violate the law.

The position I am taking is, therefore, that the amendment need not be stricken but that it should be modified to permit prompt court review of any difference between legal opinions of the Comptroller General and those of the Executive, and to permit the Comptroller General to have his own counsel (rather than the Attorney General) to represent him in such cases.

To be quite candid, I share the Attorney General's serious doubts as to the constitutionality of this amendment and may have to withhold my signature from any legislation containing it.

STATEMENT BY THE PRESIDENT

The civil rights policy to which this Administration is committed is one of demonstrable deeds—focussed where they count. One of the things that counts most is earning power. Nothing is more unfair than that the same Americans who pay taxes should by any pattern of discriminatory practices be deprived of an equal opportunity to work on Federal construction contracts.

The Philadelphia Plan does not set quotas; it points to goals. It does not presume automatic violation of law if the goals are not met; it does require affirmative action if a review of the totality of a contractor's employment practices shows that he is not affording equal employment opportunity.

The Attorney General has assured the Secretary of Labor that the Philadelphia Plan is not in conflict with Title VII of the Civil Rights Act of 1964. I, of course, respect the right and duty of the Comptroller General to render his honest and candid views to the Congress. If in effect we have here a disagreement in legal interpretation between the Attorney General and the Comptroller General the place for the resolution of this issue is in the courts.

However, the rider adopted by the Senate last night, would not only prevent the Federal departments from implementing the Philadelphia Plan; it could even bar a judicial determination of the issue.

Therefore, I urge the conferees to permit the continued implementation of the Philadelphia Plan while the courts resolve this difference between Congressional and Executive legal opinions.

My distinguished friend, the gentleman from Texas has said this is not a civil rights issue, this is an issue as to whether the Congress should control the power of the purse. My dear friend from Texas is very wrong.

The issue is civil rights and jobs—equal job opportunity for members of minority groups in America.

Let me answer the distinguished chairman by saying this: The Congress of the United States has controlled the power of the purse since the first day the Congress convened about 180 years ago, and it has controlled the power of the purse without this rider in the past and it will control the power of the purse in the future without this rider.

Second, the gentleman seems to indicate that if we defeat this rider the Comptroller General will lose his control over the purse as far as the Federal Government is concerned. Well, since 1921, when the Congress established the General Accounting Office under the Budget and Accounting Act, the Comptroller General has had an influence on expenditures by the Federal Govern-

ment. He did not have to have this rider in the past. He does not have to have this rider in the future.

My dear friend from Texas, when asked a question by the gentleman from Minnesota (Mr. FRASER), honestly said that this amendment does expand the power and the control of the Comptroller General. Of course it does. If it did not expand the power of the Comptroller General there would be no argument. As a matter of fact, there would be no need for the Senate rider in the minds of those who sponsor it because it would be meaningless. The authors in the other body want the Senate rider because it adds authority to the Office of the Comptroller General. They know it expands his power, his control. They know, too, that that amendment raises a serious constitutional issue.

The gentleman from Minnesota (Mr. MACGREGOR) will discuss the constitutional issue later during this debate.

Let me tell you, as I see it, what is the real issue. It does involve civil rights, and it does it in this way: In the 1950's and in the 1960's the Congress passed far-reaching civil rights legislation involving social rights. We passed legislation in 1965 to give to individuals in minority groups the right to vote in America. In the 1950's and in the 1960's we passed other social legislation protecting the rights of minorities—open housing and other rather sweeping legislation to protect people against discrimination because of race, creed, and color.

Now let me say this: All of those social rights are important, but if you do not have a job, it does not do you much good in some of these cases. If you do not have a job to earn the money to buy a house, then open housing legislation does not do you one bit of good. If you do not have a job to earn a living for your family, it does not do you any good in many of these other areas, many of the other areas where Congress has given protection against discrimination.

This rider prevents minority groups from getting a job in a meaningful way. This rider precludes the opportunity for job equality under Federal contracts. Make no mistake about that. Those who vote "yea" in effect are saying all these other rights are fine but we are not going to help get you a job under Federal contracts. An "aye" vote will permit the kind of discrimination in employment that has existed in the past. An "aye" vote is going to mean you vote to perpetuate job discrimination in Federal contracts. A "nay" vote means that individuals will have the protection of the Federal Government in getting jobs. Minority groups will have an opportunity to earn a living so that they can enjoy the fruits of social legislation which the Congress has passed in the last two decades.

I say to you as strongly as I can that there is no need for the rider on the appropriation bill. It was put on the appropriation bill without any consideration by the House of Representatives, without any hearings in the Committee on Appropriation in the U.S. Senate. It is unneeded. I think it is discriminatory. I hope and trust when the issue is faced up to that we will get a resounding "no"

vote. I am sure the other body will accept our vote.

Mr. MAHON. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. HOLIFIELD).

Mr. HOLIFIELD. Mr. Speaker, the House is faced today with a dilemma, and it is a very clever arrangement. It is almost as clever as the Powell amendment, which we are all familiar with. The Philadelphia plan is similar to the Powell amendment. It is advanced for political purposes.

Now, the Comptroller General acts under the Budget and Accounting Act of 1921, which comes under the jurisdiction of the House Committee on Government Operations of which I am the ranking Democratic member. That is why I am speaking in the well, because this is a special jurisdictional field I think I know something about.

The Comptroller General is a servant of the Congress. If we ever lose the services of the Comptroller General and his independence in evaluating the internal expenditures of this Government, we have lost something far more important than this ethereal Philadelphia plan.

Mr. Speaker, we have a great body of civil rights laws. I voted for every one of the civil rights bills because I believe in civil rights and also believe in the rights of labor and I have voted to protect labor.

Mr. Speaker, we are caught between the two horns of a dilemma at this time. This is a political struggle between the Attorney General and the Comptroller General. It is as clear as that.

If you decide on behalf of the Attorney General in his struggle in place of letting this go to the courts, if it is necessary to be decided, then you nullify the Comptroller General's power for all time insofar as his ability is concerned to make final decisions. And, I want to underline the word "final," because somewhere in this Government you have got to have someone to make a final decision as to where moneys are allowed to be spent in a particular field; that is, the Comptroller General being able to make such decisions as he is doing today for the Congress and not for the executive branch.

He is doing it for the Congress, and if you undermine his authority to do that, you undermine the control of the purse-strings of the Congress. That is what you would be doing. This is a real struggle for power and it is also a very clever little gimmick to put the liberals and the Democrats on the spot on this thing. Upon many occasions we have had the so-called Powell amendment put on legislation for education, housing and other programs in the United States and some of us had the guts to go down and vote against the Powell amendment because we knew it would jeopardize education and housing and the other programs. It was a mischievous amendment. It was not an amendment that would bring any good. It would bring nothing but confusion and disaster to the programs which the Congress has set up.

We have also set up a lot of programs upon which the Comptroller General has to render decisions as to the validity of expenditures. His job is to render decisions based on the statutes Congress has

enacted and in accord with the intent and purpose of Congress.

The SPEAKER, pro tempore. The time of the gentleman from California has expired.

Mr. MAHON. Mr. Speaker, I yield the gentleman 1 additional minute.

Mr. HOLIFIELD. We have, as I said, set up a lot of new programs under which the Comptroller General will have to make decisions which will either validate or nullify the expenditure of funds.

If you want to kill the power and authority of the Comptroller General, the servant of the Congress, and turn over to the Attorney General this power—and I am not speaking about personalities because Attorneys General come and go and the Comptroller General we have at this time is not a political individual. He is a public servant, one of the greatest public servants we have ever had and as for my money, I would rather have for my part this man's evaluation as to where our money should be spent rather than to put it in the office of the Attorney General which shifts with the changing tides of political opinion. The 15-year term of the Comptroller General gives him independence from political influences. His record of response to the duties Congress has imposed on him, is well known to all of us.

The SPEAKER pro tempore. The time of the gentleman from California has again expired.

Mr. MAHON. Mr. Speaker, I yield 4 minutes to the gentleman from Michigan (Mr. O'HARA).

(Mr. O'HARA asked and was given permission to revise and extend his remarks.)

Mr. O'HARA. Mr. Speaker, the rider to the supplemental appropriation bill that has been the subject of most of the discussion here today does indeed pose a very serious problem for those of us who have voted to gain equality in employment for all Americans. Indeed, I was one of the sponsors of the legislation, the Equal Employment Act, which was finally picked up by the Judiciary Committee and included as title VII of the Civil Rights Act of 1964. Since that time it has become apparent that the enforcement provisions of that legislation are inadequate to do the job as we intended.

For that reason I have together with a number of the members of the Committee on Education and Labor, sponsored a bill that would give the Commission on Equal Employment Opportunities power to issue cease-and-desist orders to enforce their findings upon those in violation, whether they be employers or labor unions. Unfortunately, that legislation has not prospered. In fact, it has recently been opposed by this administration.

Now I am told that for the sake of equal justice I should vote against a provision in an appropriation bill that affirms the finding of the Comptroller General that quotas in employment are a violation of title VII. I am sorry but I do not see it that way.

What I would really like to do is enact

legislation providing for fair and binding administrative enforcement of title VII. If we had effective enforcement of title VII we would not have to worry about this rider.

Mr. Speaker, I have consistently opposed quotas including compensatory quotas in employment. I would like to see a colorblind America in which the color of a man's skin makes no difference. It does him no harm and it does him no good. That is the kind of America I envision. And quotas, whether or not they are benign quotas, promulgated with a good intent, are wrong.

Therefore, Mr. Speaker, I will vote to uphold the committee and to concur in the Senate amendment. I do so reluctantly, because the goal that is sought by the Philadelphia plan is one that I heartily endorse although I cannot approve of the method. But I hope that we in Congress who are expressing ourselves today in favor of equality in employment opportunities will move rapidly now to strengthen the Equal Employment Opportunities Commission and to give it power to effectively enforce title VII and make it meaningful.

Mr. MAHON. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. PUCINSKI).

Mr. PUCINSKI. Mr. Speaker, several statements have been made here, one by the gentleman from Ohio (Mr. Bow), and the distinguished minority leader, that the Philadelphia plan does not have any quotas; that it is not a quota system; that it is not in violation of the 1964 Civil Rights Act. I would ask my colleagues to reach down underneath their chairs and secure the CONGRESSIONAL RECORD for December 18, and commencing on page S17135, the whole Philadelphia plan is spelled out in the RECORD.

I call your attention first of all to page S17135, which points out how the Labor Department has the right to cancel—to cancel a construction contract if he is not satisfied that a good-faith effort, as is set forth in step 10, has been unfinished by the contractor. Mind you, under the Philadelphia plan the Labor Department can set aside low bidders. This opens the door to more brutal skulduggery. Here is what it says:

Before the sanctions of cancellation, termination, suspension, or debarment are imposed against any contractor or subcontractor, he will be given the further opportunity to request a formal hearing.

In other words, any faceless bureaucrat who does not believe a contractor is making a "good faith" effort to meet the quota can cancel a contract.

Then I call your attention to page S17137, in the middle column, which says:

Further ordered: That the following ranges are hereby established as the standards for minority manpower utilization for each of the designated trades in the Philadelphia area for the next four years:

And the timetable for 1973 calls for—and you have it there in front of you, do not take my word for it, 22 to 26 percent ironworkers must be from minority groups, 20 to 24 percent plumbers and pipefitters must be from minority groups by 1973; 20 to 24 percent for

steamfitters, 19 to 23 percent for sheet metal workers, 19 to 23 percent for electrical workers, and 19 to 23 percent for elevator construction workers. These are the quotas the Labor Department has ordered for Philadelphia by 1973 and any contractor who does not meet this quota will not be eligible to bid on Federal construction contracts.

If these are not quotas, then the English language has lost its meaning. It is childish to suggest that the table I cite here from the Labor Department's own directive does not constitute a quota system. Of course the Department uses the word "ranges" but in this case you cannot, by the widest stretch of the imagination, argue that the words "the following ranges are hereby established as the standards for minority manpower utilization for each of the designated trades in the Philadelphia area for the next 4 years," is not an affirmation of quotas for each of the designated categories by 1973 in order to qualify for a contract.

I am enclosing with my remarks the order issued by the Department of Labor on quotas:

4. *Order:* Therefore, after full consideration and in light of the foregoing, be it ordered: That the Order of June 27, 1969 entitled "Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction" is hereby implemented, affirmed, and in certain respects amended, this Order to constitute a supplement thereto as required and contemplated by said Order of June 27, 1969.

Further ordered: That the following ranges are hereby established as the standards for minority manpower utilization for each of the designated trades in the Philadelphia area for the next four years:

Range of minority group employment until Dec. 31, 1970

[Percent]

Identification of trade:	
Ironworkers	15-9
Plumbers and pipefitters.....	5-8
Steamfitters	5-8
Sheetmetal workers.....	4-8
Electrical workers.....	4-8
Elevator construction workers.....	4-8

Range of minority group employment for the calendar year 1971²

[Percent]

Identification of trade:	
Ironworkers	11-15
Plumbers and pipefitters.....	10-14
Steamfitters	11-15
Sheetmetal workers.....	9-13
Electrical workers.....	9-13
Elevator construction workers.....	9-13

¹ The percentage figures have been rounded.

² After December 1, 1970 the standards set forth herein shall be reviewed to determine whether the projections on which these ranges are based adequately reflect the construction labor market situation at that time. Reductions or other significant fluctuations in federally involved construction shall be specifically reviewed from time-to-time as to their effect upon the practicality of the standards. In no event, however, shall the standards be increased for contracts after bids have been received.

Range of minority group employment for the calendar year 1972

[Percent]

Identification of trade:	
Ironworkers	16-20
Plumbers and pipefitters.....	15-19
Steamfitters	15-19
Sheetmetal workers.....	14-18
Electrical workers.....	14-18
Elevator construction workers.....	14-18

Range of minority group employment for the calendar year 1973

[Percent]

Identification of trade:	
Ironworkers	22-26
Plumbers and pipefitters.....	20-24
Steamfitters	20-24
Sheetmetal workers.....	19-23
Electrical workers.....	19-23
Elevator construction workers.....	19-23

The above ranges are expressed in terms of man hours to be worked on the project by minority personnel and must be substantially uniform throughout the entire length of the project for each of the designated trades.

I tell you, Mr. Speaker, the Labor Department and the President are engaging in a scheme that violates every concept of prohibition against quotas. They are turning the clock back.

I agree with the distinguished gentleman from Michigan. Of course we want to give every person in America an equal opportunity for jobs and employment in the building trades. But the Philadelphia plan, with its quota system, is not the way to do it. And your Comptroller General, the man that each of you relies on day in and day out for information, has told you that this plan runs contrary to the 1964 Civil Rights Act.

Mr. Speaker, I support the committee and its full recommendation. I can tell you this: If the Labor Department persists in the Philadelphia plan you will see the cost of construction skyrocket. What will happen as a probable proposition is that contractors will hire minority group workers to show they meet the quota but if such workers don't have the training to do the job, contractors will hire white workers to actually do the work and add the additional workers to the cost of the project. The whole concept is incredible and indefensible. More important, if you think it will stop in Philadelphia or the building industry you are mistaken. The Secretary of Transportation has adopted the Philadelphia plan procedure in awarding of highway construction contracts.

Mr. MAHON. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. FRASER).

Mr. FRASER. Mr. Speaker, I do not know if the Philadelphia plan is legal or illegal. I am not impressed by the reading from title VII of the Civil Rights Act, because the President is not proceeding under that power, so that the provision which rightfully proscribes quotas under title VII, it seems to me, may not be applicable in this case.

What I am concerned about is for us to say today that the Comptroller General's opinion should be binding and that no money can be paid out and, therefore,

no contracts may be let or carried forward which would affirmatively seek to end discrimination in employment and expand employment opportunities for minority groups under the scheme known as the revised Philadelphia plan.

I cannot tell, except for the word of the chairman, whether or not in section 904 what we are asked to embrace really does alter the relationship between the Attorney General and the Comptroller General.

If it does not alter the relationship, if it is simply a restatement of existing law, it is not necessary. If it does change the law, I would like to have spelled out just how that law is changed.

This is a matter of some importance. I think the chairman is right when he says that this goes to a very fundamental question relative to the rights of the Congress in the control of the use of funds. But I am not prepared to dispose of that very fundamental question in the kind of limited time frame that we have here this afternoon.

It seems to me that the Government Operations Committee might well take this question up next year to see if in fact the Attorney General has acted unwisely or improperly and perhaps strengthen our statutory powers as a Congress.

I remain committed to the principle that in this Nation which is torn so severely by racial tensions, when I can I want to cast my vote in favor of trying to make it possible for those who have suffered for so long to gain equal access to employment in America.

Mr. MAHON. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. THOMPSON).

(Mr. THOMPSON of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON of New Jersey. Mr. Speaker, one has only to sit in this Chamber and listen to such thoughtful people as the gentleman from Minnesota and the gentleman from Michigan and the chairman of the committee to realize the enormity of this problem and the difficulty that is involved.

I think I am not alone on this side of the aisle in saying perfectly candidly at this minute that I have yet to make up my mind as to how I am going to vote. I am not really terribly impressed by the minority leader's invocation of Father Hesburgh's name in support of his argument today, especially in view of the fact that when the voting rights bill was up just a few days ago Father Hesburgh's advice was ignored by that gentleman—just as an indication of the schizophrenia, I suppose, that exists throughout this body.

I hope to develop at an appropriate time an amendment which will be acceptable to the great majority of this House who favor equal opportunity for all, an amendment which will, I think, if I may develop it in time, rather dramatically demonstrate who is for and

who is not for equal employment opportunity.

Mr. MAHON. Mr. Speaker, I would like to make this further statement.

We are about to vote on the conference report. The conference report deals with mine safety funds, appropriations for Small Business Administration, disaster loans, and sundry other items.

The final provision in the bill, which was brought back in technical disagreement, is amendment No. 33. As I noted a while ago, amendment No. 33, about which we have had much discussion, is not included in the conference report. So far as I know, there is nothing controversial about the conference report.

As this point, I would like to move the previous question on adoption of the conference report.

Mr. BOW. Mr. Speaker, will the gentleman yield before he moves the previous question?

Mr. MAHON. I yield to the gentleman from Ohio.

Mr. BOW. I would like to say to the gentleman from Texas that, insofar as this Member, and I believe most of the members of our committee are concerned, we shall support the report. The real question will come when the gentleman from Texas offers his motion to recede and concur with amendment No. 33. That I do not approve of, but I do want to make it clear that I have no objection to the other items in the conference report, and I shall support the gentleman's motions.

Mr. CRAMER. Mr. Speaker, I rise in support of the amendment to the supplemental appropriations bill. I want to state at the outset my firm belief that the matter before us transcends the civil rights considerations with which it is, unfortunately, intertwined. It is far more fundamental and basic than that. It involves the very essence of our tripartite system of government and the respect for the role and responsibility of each branch which is essential for the effective functioning of all.

In the congressional debate establishing the Office of the Comptroller General a half century ago, it was declared:

If, he, the Comptroller General, is allowed to have his decisions modified or changed by the will of the Executive, then we might as well abolish the office.

I regret to say that we are confronted with a situation in which precisely that authority is being asserted by an agency of the executive branch.

The Comptroller General, as agent of this body, undertook to declare that an expenditure of public money was illegal and should not be paid out. The Attorney General, thereupon sought to contravene that ruling. He declared that the expenditures in question were legal and that the executive departments involved should proceed to make them.

The language of the amendment before us is simple and direct. It would overrule this attempted arrogation of authority. It provides that:

No part of the funds appropriated or otherwise made available by this or any other act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement

which the Comptroller General of the United States holds to be in contravention of any Federal statute.

The purpose of the amendment is to reaffirm the power which we long ago granted to the Comptroller General. If we do not, if we allow the current challenge by the executive branch to go unanswered, I am very much afraid that the constitutional consequences will be very grave indeed. Can there be any doubt that if the Attorney General can overrule one decision he can overrule any and all decisions made by the Comptroller General.

In my judgment, to sanction such an assertion of power would be for Congress to surrender its power over the purse to the executive branch.

Opponents of the amendment assert that its passage would somehow or other override the constitutional authority of the courts; that the judiciary will in some manner be inhibited from carrying out its function to interpret the laws. This is a fallacious argument. Decisions of the Comptroller General are binding on the executive branch, not on anyone outside of it. Any aggrieved citizen may appeal his rulings. As Senator ALLOTT so eloquently declared when this measure was under consideration in the other body:

The Comptroller General is not a Super God in Government. He is the arm of Congress, and that is all he is; and Thank God we have such an arm in the Government. If we did not have that arm, we in Congress would be subject to the will and whim of the Executive Branch.

On May 22, 1968, the Comptroller General ruled, on my request, that the EEO requirements relating to Highways were illegal. I believe that subsequent efforts to enforce the Philadelphia plan are contrary to competitive bidding laws as well as the 1964 Civil Rights Act, § 703(a) and § 703(j).

My letter of April 8 and a copy of the May 22 letter in reply follows.

APRIL 8, 1968.

HON. ELMER B. STAATS,
Comptroller General of the United States,
General Accounting Office, Washington,
D.C.

DEAR MR. STAATS: The Office of Federal Contract Compliance of the United States Department of Labor has recently proposed procedures designed to insure that contractors and subcontractors on Federally-assisted construction contracts would provide "affirmative action programs" relative to equal employment opportunities. Attached is a draft memorandum submitted for comment to the heads of all agencies by the Director of the Office of Federal Contract Compliance. A final order regarding compliance with the procedures outlined in the draft memorandum has not yet been issued. I am informed, however, that a final order will be issued in the relatively near future, and that it will contain substantially the same requirements as set forth in the draft memorandum.

Briefly speaking, the procedures contemplate the following actions: On all projects to cost \$1 million or more the specifications for the project would include a notice to the prospective bidders that the low bidder will be required to submit, in writing, an "acceptable affirmative action program" to assure equal employment opportunity. The specifications for the project apparently would not include a statement outlining the details of what would be an "acceptable affirmative action program". After the bids are

opened, but before the contract is awarded, the low bidder would have to submit an action program for evaluation by the contracting or administrative agency. If the proposed action program is not acceptable to the contracting or administrative agency, negotiations would ensue and the contract not awarded until agreement has been reached on the acceptability of the program.

Imposition of these procedures will certainly cause added delay and cost to the Federal-aid highway program. In my opinion, there is considerable doubt as to whether these procedures are permissible under the competitive bidding requirements applicable to Federal-aid highway contracts. Under the provisions of section 112 of title 23, United States Code, construction of each Federal-aid highway project "shall be performed by contract awarded by competitive bidding, unless the Secretary shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest."

In order for bidding to be truly competitive, all bidders must compete on the same basis with no allowance for registrations on particular aspects of the project after the bids are opened.

Under the procedures proposed by the Office of Federal Contract Compliance, the bidders will not know, at the time of bidding, what will constitute an acceptable action program, and therefore will not be able to make a reasonable estimate of the probable cost of the program. Since the proposed procedures apply to subcontractors as well as prime contractors, the prime contractor will have to run the risk that the subcontractors he expected to use may not submit an acceptable action program. If they fail to do so, the prime contractor will have to use different subcontractors, with the possibility of added cost to him. It should also be pointed out that if a low bidder decides for reasons satisfactory to him that he does not wish to enter into a contract on the basis of the bid, he can accomplish his purpose by failing or refusing to submit an acceptable action program.

There are other legal and practical problems which would be created by imposition of the procedures proposed by the Office of Federal Contract Compliance. My major concern at the present time, however, is whether, under the provisions of the competitive bidding requirements of section 112, title 23, United States Code, the proposed procedures can legally be required.

I will appreciate your opinion on this question.

With kindest regards, I am
Sincerely,

WILLIAM C. CRAMER.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C. May 22, 1968.

HON. WILLIAM C. CRAMER,
House of Representatives.

DEAR MR. CRAMER: Further reference is made to your letter of April 8, 1968, with enclosure, concerning requirements for acceptable "affirmative action programs" for compliance with the equal employment opportunity conditions of Executive Order No. 11246 of September 24, 1965. You enclose a copy of a draft memorandum of a proposed order which was submitted for comment to the heads of all agencies by the Director, Office of Federal Contract Compliance (OFCC), Department of Labor.

We understand your request for our opinion is confined to the propriety of the prepared requirements, particularly with reference to the Federal-aid highway program, in view of the specific provision of 23 U.S.C. 112 that such highway projects shall be performed by contracts awarded by competitive bidding and that you do not question gen-

erally the legality of the requirement for the inclusion of nondiscrimination clauses, which were first imposed as to Government contracts by Executive Order No. 3802, June 25, 1941, and extended to construction contracts under federally aided or financed programs by Executive Order No. 1114, June 22, 1963.

You state that the procedures proposed by the Department of Labor contemplate that the low bidder and its subcontractors, on contracts covered by the order, will be required to submit before award acceptable affirmative action programs to assure equal employment opportunities, but that the invitation for bids apparently would not include a statement outlining the details of an acceptable program. Further, that when an unacceptable program is submitted award will not be made until agreement is reached on an acceptable program. You say that since bidders will not know what will constitute an acceptable program they will not be able to make a reasonable estimate of the probable cost of the program, and thus must run the risk of added costs, including possible additional subcontracting costs, when the proposed subcontractors do not submit acceptable action programs. You also point out that a low bidder has the opportunity to avoid entering into a contract by failing or refusing to submit an acceptable action program. Finally, you state that you believe imposition of the proposed procedures will cause added delay and cost to the Federal-aid highway program.

The purpose and background for the proposed order is stated therein as follows:

"1. Purpose

"This Order is to insure that before contracts are awarded, Federally involved construction contractors provide affirmative action programs which comply with the requirements of Executive Order 11246 and with Rules and Regulations issued pursuant to it.

"2. Background

"For over one and a half years, acceptable affirmative action programs have been required before contract award by a number of Federal contracting and administering agencies. Detailed pre-award programs are now required by this Office in three specific geographical areas (St. Louis, San Francisco Bay, and Cleveland) for all Federal contracting and administering agencies. Experience has shown that such procedures are considerably more effective in implementing the Executive Order than exclusively post-award approaches. The pre-award requirement for nonconstruction contracts has been in effect since May 3, 1966."

The following pertinent provisions of the proposed order are set forth under paragraph 3b:

"On all projects for Federal or Federally-assisted construction, in which the total construction cost may be one million dollars or more:

"(1) Each agency shall include, or require the applicant to include, in the specifications for each formally-advertised construction contract, a notice (the form of which is approved by the Office of Federal Contract Compliance) to all prospective bidders stating that, if its bid is one million dollars or more, the low bidder must submit, in writing, (an) acceptable affirmative action program(s) which will have the result of assuring equal employment opportunity in all trades and particularly the better-paid trades (such as electricians, plumbers, pipefitters, sheet metal workers, ironworkers and Operating Engineers) to be used on the job and in all phases of the work, whether or not the work is to be subcontracted.

"(2) Before each contract is awarded, the contracting or administering agency shall make an evaluation of the proposed affirmative action program submitted with the bid.

The evaluation shall be conducted by qualified specialists regularly involved in equal employment opportunity programs, in cooperation with the OFCC Area Coordinator if one serves the area where the contract will be performed."

Under paragraph 3c each Federal contracting and administering agency is required to submit to the OFCC its program to implement the order.

Existing regulations issued by the Secretary of Labor pursuant to the authority of the Executive Order, which appear in Title 41, Chapter 60, of the Code of Federal Regulations, require that federally assisted construction contracts shall include a clause under which the contractor and subcontractors agree to take various affirmative actions to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. 41 CFR 60-1.3(b). A proposed revision of 41 CFR Ch. 60 issued by the Office of Federal Contract Compliance pursuant to Executive Order No. 11246, was published in the Federal Register, Vol. 33, No. 32, on February 15, 1968. Requirements for a similar clause in federally assisted construction contracts and subcontracts are stated under Section 60-1.4(b) of the proposed revision, and general requirements of satisfactory affirmative action programs are set forth in Subpart C thereof. Other than the submission of an affirmative action program prior to award, and the requirement for approval thereof by OFCC prior to award, we do not find a substantial basis on which to conclude that the proposed order contemplates that the affirmative actions required of contractors or subcontractors under federally examined construction contracts will be materially different from those which have been required of such parties after award for several years.

A review of the records of this Office does not show receipt of any cases involving undue restrictions on competition resulting from the requirement for affirmative actions by contractors to ensure compliance with the Equal Employment Opportunity Program in federally assisted construction contracts, or involving contractors having encountered substantially higher costs in satisfactorily complying with equal opportunity requirements than were anticipated in the preparation of their bids. It is further noted that, in the background information quoted above, it is stated that preaward acceptable affirmative action programs have been required by a number of Federal procurement agencies for over two years, and our records fail to show any cases presented to this Office wherein award was not made to the low bidder because of his failure or refusal to submit an acceptable affirmative action program, or involving claims for unanticipated costs resulting from such a program.

While, as noted above, problems in the existing preaward acceptable affirmative action program have not been reflected in our contract work, statements contained in records of your office which you have made available for examination by representatives of this Office reflect that road contractors may be encountering serious problems in connection with the preaward program as it is being administered in the geographical areas mentioned in the proposed order. Such statements indicate that the preaward procedures have in some instances resulted in extended periods of delay in the awarding of contracts; that bidders are furnished inadequate guidelines for the development of an acceptable affirmative action program, and the responsive (and otherwise responsible) bidder may therefore be required to enter into negotiation procedure on an acceptable program in order to obtain the award; that a program which is acceptable on one contract may not be acceptable on another; that a program which is acceptable at the time

the contract is awarded may be unacceptable when the project is half completed; and that a bidder operating under negotiated labor agreements would in some cases be required to violate those agreements in order to comply with the proposed order.

Statutory provisions, such as that contained in 23 U.S.C. 112, for competitive bidding in the award of contracts have been interpreted to require award after advertising to the lowest responsible bidder whose bid is responsive to the terms of the invitation, and it is elementary that bidders must be adequately advised beforehand of all material requirements which will affect their costs or ability to perform. Invitations for bids were designed to secure a firm commitment upon which award could be made for securing the Government's requirements described therein, and not as a first step for subsequent negotiation procedures. In view thereof, there would appear to be a technical defect in an invitation's requirement for submission of a program subject to Government approval prior to contract award which does not include or incorporate definite standards on which approval or disapproval will be based. We believe that the basic principles of competitive bidding require that bidders be assured that award will be made only on the basis of the low responsive bid submitted by a bidder meeting established criteria of responsibility, including any additional specific and definite requirements set forth in the invitation, and that award will not thereafter be dependent upon the low bidder's ability to successfully negotiate matters mentioned only vaguely before the bidding. We are therefore advising the Secretary of Labor that if the proposed order is adopted it should be appropriately implemented, before becoming effective, by regulations which should include a statement of definite minimum requirements to be met by the bidder's program, and any other standards or criteria by which the acceptability of such program will be judged.

As to any added delay or cost to the Federal-aid highway program which might be occasioned by the requirement for acceptable affirmative action programs by contractors and subcontractors, such factors would not negate the apparent legality of the requirement. As indicated above, one of the basic requisites in awarding contracts pursuant to competitive bidding is that award be made to a responsible bidder, and added delay and cost in determining the responsibility or acceptability of the low responsive bidder are matters commonly associated with the awarding of such contracts.

Although, as you state, imposition of the procedures proposed by the Office of Federal Contract Compliance will no doubt create other legal and practical problems, we believe that many areas of such contemplated problems may be subject to resolution or disposition by regulations promulgated by the Office of Federal Contract Compliance or by implementing regulations of the agencies as provided for in the proposed order. In any event, we cannot conclude at this time that the proposed requirement for submission of acceptable affirmative action programs prior to awarding federally assisted construction contracts is as a matter of law clearly incompatible with competitive bidding requirements of 23 U.S.C. 112, and therefore illegal, provided the implementing regulations discussed above are issued before the proposed order establishing such requirement becomes effective.

We trust this serves the purpose of your letter of April 8. Please let us know if we can be of any further assistance in this matter.

Sincerely yours,

/s/ FRANK H. WEITZEL,
Assistant Comptroller General
of the United States.

Mr. TAFT. Mr. Speaker, the elimination by the conference committee of funding for a Commission on Population Growth and the American Future points up the failure of this House to act on H.R. 15165. This measure was recently removed from consideration under suspension of the rules. Hopefully this legislation will get a rule early in the next session and will be enacted and then funded by a supplemental appropriation bill.

This makes it appropriate to discuss other developments in this important area.

Mr. Speaker, today the House Republican Task Force on Earth Resources and Population, chaired by the gentleman from Texas (Mr. BUSH) released a comprehensive report on Federal family planning programs after having conducted extensive hearings and research throughout this session of Congress.

As chairman of the House Republican Research Committee, I wish to commend Chairman BUSH and his task force colleagues for preparing this timely report which has been placed in the RECORD today. The report contains a careful analysis of the domestic and international problems associated with providing family planning services to those who desire and need this service. The task force has also made a series of recommendations, which I endorse, that would strengthen the Federal Government's family planning programs and enable us to meet the national goal enunciated by President Nixon of providing family planning services to all who desire and need such services but cannot afford them.

Through their hearings with prominent figures in the field of family planning and population, their independent research, and the issuance of their report, the Republican Task Force on Earth Resources and Population has provided the Congress and the American people with much needed information on a topic which should be a matter of high priority among governmental and private sector decision-makers.

The problems associated with family planning and population growth are among the most critical we face as a nation. I therefore urge all Members of Congress to consider the report with utmost care. The earth resources and population task force's recommendations merit early consideration by this body next session.

A related matter in the population field requiring prompt congressional action next session is H.R. 15165, the bill to create a Commission on Population Growth and America's Future. I was deeply disappointed when I learned last week that the Democratic House leadership had failed to schedule this legislation. It was reported unanimously by the Committee on Government Operations on December 10. Similar legislation has already passed the other body without opposition.

It was my understanding that H.R. 15165 would be considered on Monday, December 15, under suspension. The Democratic House leadership, however, failed to place this important piece of

legislation on the calendar for last Monday. There is no reason for holding up this bill.

The President recognized the urgency of the population problem in his message to Congress on July 18 when he called for creation of a Commission on Population Growth and the American Future. All Members of the House Republican Task Force on Earth Resources and Population, the Republican leadership, along with a substantial majority of the members of the Government Operations Committee heeded the President's call for action and cosponsored the Commission bill. Now, however, the House has been denied an opportunity to work its will on the legislation until next year. The work of this Commission is too important to be delayed indefinitely. Rather, it should be starting its work immediately.

At present rates of growth, the United States will reach a population of 300 million in the next 30 years. An increase of that magnitude is going to place a tremendous strain on both our natural resources and our social institutions. We need to know what the impact of that population growth will be on our society. We need this information gathered in a comprehensive and systematic manner, as quickly as possible because all the values we prize—decent housing, quality education, economic opportunity, outdoor recreation, privacy, natural beauty, and even free institutions—are at stake.

In his message to the Congress, President Nixon correctly stated that too few people are examining the problems associated with population growth from the viewpoint of the whole society. The Commission proposal in H.R. 15165 would therefore address itself to these problems:

First, the probable course of population growth, internal migration and related demographic developments between now and the year 2000;

Second, the resources in the public sector of the economy that will be required to deal with the anticipated growth in population;

Third, the ways in which population growth may affect the activities of Federal, State, and local governments;

Fourth, the impact of population growth on environmental pollution and on the depletion of natural resources; and

Fifth, the various means appropriate to the ethical values and principles of this society by which our Nation can achieve a population level properly suited for its environmental, natural resources, and other needs.

There should be no delay in our search for these answers and that is why the Commission legislation is so important. Certainly H.R. 15165, the bill to create a Commission on Population Growth and the American Future, should be the first item on the House agenda in January.

Mrs. HANSEN of Washington. Mr. Speaker, the House was so occupied this afternoon debating other items in this supplemental appropriations bill, H.R. 15209, that I did not take the time to advise the House of exactly why the Indian health service appropriation ap-

pears not as large in the conference report as the amount which reached us from the other body. I, therefore, take this opportunity to place in the RECORD the following table on Indian health service:

Appropriations	
1968 -----	\$90,860,000
1969 -----	94,350,000
<hr/>	
1970 -----	99,481,000
1970 supplemental -----	2,048,000
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Total, 1970 -----	101,529,000

In considering these figures it should be noted that—even as the Congress is adding funds and even if there is a shortage of service and medical care in various Indian health facilities—the Bureau of the Budget in its "infinite wisdom" has held back in reserve \$957,000 of operating funds appropriated earlier this year.

This was not a construction cut. These are funds for medicine, personnel services and all the other things that mean health care for Indians.

I have heard this afternoon a lot of double talk and lip service to civil rights. Civil rights is more than casting an occasional vote. Civil rights is an administration caring enough to release that \$957,000 to buy medical help and assistance to American Indians.

I now list for you the total amount of contract medical care year by year:

1965 -----	\$11,815,000
1966 -----	12,861,000
1967 -----	14,106,000
1968 -----	15,537,000
1969 -----	17,779,000
<hr/>	
1970 -----	19,114,000
1970 supplemental -----	1,000,000
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Total available in 1970 ---	20,114,000

You will note that H.R. 15209 has added \$1 million relative to the additional money provided in the other body to this supplemental appropriation. It is useless to provide funding for additional positions when the regular 1970 appropriations bill provides for 6,583 positions but the Bureau of the Budget imposed a personnel ceiling on the Indian health service 5982. There are 5,813 now on duty and, due to personnel freezes, the department has filled only 65 percent of all vacancies.

I list below construction totals for the Indian health service:

1968 -----	\$16,848,000
1969 -----	18,156,000
<hr/>	
1970 -----	19,000,000
Supplemental -----	1,952,044
<hr/>	
Total 1970 -----	20,952,000

Of the \$19,000,000 appropriated for construction in the regular 1970 appropriation bill, \$1,432,000 has not been apportioned.

Mr. Speaker, it is time that this House recognized that only by lifting these ceilings—only by the actual expenditures of these funds—can we expect better Indian health services.

It is sheer hypocrisy to expect while there are personnel ceilings and unspent reserves that health care can be made available in the manner which this House

intended when it passes an appropriation bill.

Mr. BOLAND. Mr. Speaker, I am pleased that the House and Senate conferees on the fiscal year 1970 supplemental appropriations have agreed to include necessary funds in the bill for the stationing of an additional weather ship in the North Atlantic Ocean, approximately 200 miles south southeast of Nantucket Island.

The Department of Transportation has been allowed \$1 million so the Coast Guard can provide and maintain this ocean station vessel. Meteorological equipment and instruments for the vessel will be provided for under the \$1,040,000 supplemental appropriations for the Environmental Science Services Administration.

This ship will provide New England and the entire northeastern section of the Nation with vastly improved weather forecasting information. The data provided would save many lives and prevent considerable economic loss when hurricanes and blizzard-type winter storms blow northward along the Atlantic Ocean coastline. The "killer" snowstorms last year, striking without adequate warning, caused loss of lives and economic damages estimated at \$100 million in the New York-New England regions.

The United States now maintains four vessels in the North Atlantic as part of the ocean stations program. This additional ship, south of New England, will assist ESSA in gathering surface weather observational data, upper air soundings and weather radar information in order to better track and forecast east coast storms and tropical hurricanes. The ocean area south of New England is now a meteorological blind area. The need to have weather observations from this area has become increasingly greater as the population has increased along the Eastern seaboard and as the economy has become more dependent on technology with the corresponding increase in the need for more accurate weather forecasts and warnings.

From this Coast Guard operated vessel, ESSA will be equipped to take upper air soundings of pressure, temperature and wind—data essential for numerical computer calculations of hurricanes and east coast storms. The weather radar aboard the ship will enable ESSA to provide a detailed hour-by-hour track of the centers of storms and their accompanying precipitation. Surface weather observations from the vessel will provide additional essential data for use in storm tracking and forecasting.

Mr. Speaker, I want to take this opportunity to commend my colleague from Massachusetts, Senator EDWARD W. BROOKE, for the time and effort he put into the investigation of the adequacy of storm warnings for New Englanders, following the destructive storms of last winter. With the money provided in this bill, an additional vessel will be stationed in the data-sparse area of the North Atlantic south of Nantucket so that the accuracy of forecasts and warnings can be improved along the east coast.

Mr. MAHON. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore (Mr. HOLIFIELD). The question is on the conference report.

The conference report was agreed to.

The SPEAKER pro tempore. The Clerk will report the first committee amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 4: Page 3, line 18, insert: ", to remain available until June 30, 1972."

MOTION OFFERED BY MR. MAHON

Mr. MAHON. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MAHON moves that the House recede from its disagreement to the amendment of the Senate numbered 4 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 8: Page 5, line 5, insert:

"BUREAU OF MINES

"For expenses necessary to improve health and safety in the Nation's coal mines, \$15,000,000."

MOTION OFFERED BY MR. MAHON

Mr. MAHON. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MAHON moves that the House recede from its disagreement to the amendment of the Senate numbered 8 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert:

"BUREAU OF MINES

"HEALTH AND SAFETY

"For an additional amount for expenses necessary to improve health and safety in the Nation's coal mines, \$12,000,000: *Provided*, That this paragraph shall be effective only upon the enactment into law of S. 2917, 91st Congress."

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 13: Page 5, line 19, insert:

"MAINTENANCE AND REHABILITATION OF PHYSICAL FACILITIES

"For an additional amount for "Maintenance and Rehabilitation of Physical Facilities", \$75,000, for reconstruction of certain streets in Harpers Ferry, West Virginia."

MOTION OFFERED BY MR. MAHON

Mr. MAHON. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MAHON moves that the House recede from its disagreement to the amendment of the Senate numbered 13 and concur therein with an amendment, as follows: In lieu of the sum named in said amendment, insert: "\$50,000".

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 19: Page 7, line 11, insert:

"DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

"For expenses necessary to improve health and safety in the Nation's coal mines, \$10,000,000."

MOTION OFFERED BY MR. MAHON

Mr. MAHON. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MAHON moves that the House recede from its disagreement to the amendment of the Senate numbered 19 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert:

"DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

"CONSUMER PROTECTION AND ENVIRONMENTAL HEALTH SERVICES

"ENVIRONMENTAL CONTROL

"For expenses necessary to improve health and safety in the Nation's coal mines, \$10,000,000: *Provided*, That this paragraph shall be effective only upon the enactment into law of S. 2917, 91st Congress."

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 27: Page 11, line 1, insert:

"UNITED STATES SECTION OF THE UNITED STATES-MEXICO COMMISSION FOR BORDER DEVELOPMENT AND FRIENDSHIP

SALARIES AND EXPENSES

"For necessary expenses of the United States Section of the United States-Mexico Commission for Border Development and Friendship, including expenses for liquidating its affairs \$159,000, to be available from July 1, 1969, and to remain available until January 31, 1970.

MOTION OFFERED BY MR. MAHON

Mr. MAHON. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MAHON moves that the House recede from its disagreement to the amendment of the Senate numbered 27 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 29: Page 12, line 15, insert:

"UNITED STATES SECRET SERVICE

"SALARIES AND EXPENSES

"For an additional amount for "Salaries and Expenses," including purchase of an additional forty-two motor vehicles for police-type use without regard to the general purchase price limitation for the current fiscal year, \$4,250,000: *Provided*, That this paragraph shall be available only upon enactment into law of H.R. 14944, 91st Congress, or similar legislation."

MOTION OFFERED BY MR. MAHON

Mr. MAHON. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House recede from its disagreement to the amendment of the Senate numbered 29 and concur therein with an amendment, as follows: In lieu of the sum named in said amendment, insert "\$4,000,000".

The motion was agreed to.

The SPEAKER pro tempore. The Clerk

will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 32: On page 15, line 15, insert:

"SEC. 1003. The appropriations, authorizations, and authority with respect thereto in this Act, the Department of Defense Appropriation Act, 1970, the District of Columbia Appropriation Act, 1970, the Foreign Assistance and Related Agencies Appropriation Act, 1970, the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1970, the Military Construction Appropriation Act, 1970, and the Department of Transportation Act, 1970, shall be available from the sine die adjournment of the first session of the Ninety-first Congress for the purposes provided in such appropriations, authorizations, and authority. All obligations incurred during the period between the sine die adjournment of the first session of the Ninety-first Congress and the dates of enactment of such Acts in anticipation of such appropriations, authorizations, and authority are hereby ratified and confirmed if in accordance with the terms of such Acts or the terms of Public Law 91-33, Ninety-first Congress, as amended, except that subsection (c) of section 102 of Public Law 91-117, as amended, is hereby repealed, and in lieu thereof the following is inserted: "(c) January 30, 1970, whichever first occurs.""

MOTION OFFERED BY MR. MAHON

Mr. MAHON. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MAHON moves that the House recede from its disagreement to the amendment of the Senate numbered 32 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert:

"SEC. 1003. Section 102 of the Act of November 14, 1969 (Public Law 91-117), as amended, is further amended by striking "the sine die adjournment of the first session of the Ninety-first Congress" and inserting in lieu thereof, "January 30, 1970"."

The SPEAKER pro tempore. The gentleman from Texas is recognized.

Mr. STEED. Mr. Speaker, will the gentleman yield?

Mr. MAHON. I yield to the gentleman from Oklahoma.

Mr. STEED. Mr. Speaker, I appreciate the gentleman from Texas yielding.

Mr. Speaker, I think it is only fair to call the attention of the House to the fact that this amendment is a continuing resolution, and while I think we are probably going to adopt it, I personally am opposed to it. Let me point out that, in my opinion, the minute we adopt this resolution, we are saying to the American people that we are not only incapable of finishing our work, but also that we have no intention of doing so. When we adopt this amendment, we shall have given up our chance to see to it that the appropriation bills that should be passed will be passed—especially the Labor-HEW on which the House has finished all its action.

I think it ought to be clear to every Member here that by the time we get home, we will be hearing a great deal about the incompetent session of Congress that could not finish its work. I am opposed to adopting a continuing resolution at this stage of affairs.

I think it ought to be stricken out here. If it becomes necessary before we adjourn to have such a continuing reso-

lution, it could very easily be accomplished. I am going to oppose this amendment in the hope that the House will take it out at this stage and retain some ability to try to get this Congress to finish its work before we adjourn.

Mr. ICHORD. Mr. Speaker, will the gentleman yield?

Mr. MAHON. I yield to the gentleman from Missouri.

Mr. ICHORD. Mr. Speaker, I would like to ask the distinguished gentleman from Texas this question. It has been rumored that the Senate conferees have already decided it will not go into further conference with the gentleman from Louisiana on the Foreign Assistance Act, and the amendment of the distinguished gentleman from Texas does provide for continuing appropriations on the Foreign Aid Assistance Act. Is there not some basis for the concern of the gentleman from Oklahoma? Are we not here acquiescing in the intention of the Senate to adjourn without completing action on appropriation measures?

I disagree with the intentions of the Senate. I think they should stay here and finish their work. I would have to concur with the gentleman from Oklahoma and object to the amendment also.

Mr. MAHON. Mr. Speaker, the issue before the House now is, shall we provide that in any instance where an appropriation has not been enacted to carry out the functions of any department or agency of the Government, that department or agency of the Government shall be authorized to proceed under certain conditions up to January 30, 1970. This applies to the entire Government and applies to any bills not enacted before adjournment. So I would think this is the only appropriate thing to do.

There has been a great deal of controversy as to how we should restructure the foreign aid program. Mr. Nixon says he wants it restructured. There must be a study first. Officials are supposed to report on the findings of this study, I believe, in March, so some delay in that bill should not be taken as an indication of any inability of the Congress to proceed. AID can proceed at the level of last year, which is below the level of the bill which cleared the House a few days ago under the continuing resolution. With reference to the Labor-HEW bill, the President sent a message to the Congress last week, when the issue arose, stating that the President would veto the Labor-HEW bill because it was considerably above his budget request and was inflationary.

I made a statement to Mr. Harlow and asked him to convey it to the President, saying that we should not proceed without some definite statement and that we would need a letter from the President. Mr. Harlow got back in touch with me and said the President would provide a letter.

Later in the evening of that day I was over in the other body, with the leaders of the other body, and a letter to the leaders was arranged.

The House could stay in session, let the President make his veto, which as I understand he is committed to do, and then we would vote on the issue. Or we could wait and let the President veto

a Labor-Health, Education, and Welfare bill in January, when we return on about the 19th.

It seems to me nothing will be jeopardized particularly by this procedure. So, under the circumstances, in view of Christmas, the time when we celebrate the birthday of the Saviour of the world, it seems to me even this deliberative and august body might recess, so that Members might unwind in an atmosphere of peace and quiet and come back with clearer minds and warmer hearts in late January and determine what to do about the President's veto. This does not seem to be too unreasonable to me, although I am willing to proceed either way.

Mr. STEED. Mr. Speaker, will the gentleman yield further?

Mr. MAHON. I yield.

Mr. STEED. We may come back with clearer minds and purer hearts but without any hides when the people get through with us because we would not finish our work.

I am not aware of what the President's position is on this, but I believe all of us have to be aware of our own responsibilities. I believe we ought to defeat this amendment now. We could take up a continuing resolution later in the session, if it became absolutely necessary. To foreclose our prerogatives by adopting a continuing resolution now seems to me to be not in the best interest of the House. I hope we will take it out and try to find a better way to complete our work in the time remaining.

It is a very simple thing to send a bill to the White House. The President said he might veto it, but that was before the conference report. None of the changes had been made in the bill by the conferees. He might have a different opinion about it now.

I believe our main concern, is not so much what the President is going to do, but what are we going to do! I do not want us to go home, saying at this stage of the game not only that we cannot but we do not intend to finish our work.

Mr. MAHON. The gentleman's views are of interest. I happened to be in Oklahoma in his district not long ago. I learned of the affection in which he is held by the people. His concern that if we adjourn for Christmas and return to our people we will not be well received I believe is ill founded, especially in the case of the gentleman from Oklahoma, who is much beloved and respected.

I feel all of us will be well received by the folks at home, and they will understand we have done the best we could under the circumstances.

Mr. COHELAN. Mr. Speaker, will the gentleman yield?

Mr. MAHON. I yield to the gentleman from California.

Mr. COHELAN. I wonder if my distinguished chairman would comment further on the continuing resolution. As I understand it, we passed the Labor-HEW bill, which is now over in the Senate. Apparently, if I understand the colloquy between the gentleman and the gentleman from Oklahoma, the Senate does not propose to act on it until Janu-

ary; therefore, it is required we have a continuing resolution.

My question of the gentleman is: What happens to title B funds under the continuing resolution?

Mr. MAHON. In answer to the gentleman's question, let me say I do not know what the other body will do. The other body is somewhat like this body. One cannot always be sure what we are going to do from moment to moment. We have to do whatever is necessary to meet the demands of the hour. A time of adjournment is very unpredictable. I do not know what the other body will do.

In response to the gentleman's question as to what happens to impacted aid funds, under the present law impacted aid funds are payable and they will continue to be payable under the continuing resolution up to the 30th day of January. It will not change the situation.

Mr. COHELAN. If the gentleman will yield further, my distinguished chairman, I am sure, is aware that for the last 60 days there have been no payments made by HEW. Can we expect more of the same under a continuing resolution?

Mr. MAHON. I would assume that the President would continue to wait until he has the final package before he makes a final determination as to the release of these funds. What our people are interested in is impacted aid is more especially whether or not they eventually get the money. Whether it is early or in the middle of the year or later in the year is not important to them in some districts, although it very well may be in some others.

Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. MAHON).

The question was taken; and on a division (demanded by Mr. STEED) there were—ayes 108, noes 35.

Mr. ICHORD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

PARLIAMENTARY INQUIRY

Mr. GERALD R. FORD. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. GERALD R. FORD. Mr. Speaker, on this vote a "yea" vote would strike out the continuing resolution?

The SPEAKER pro tempore. The Chair will inform the gentleman that this motion relates to Senate amendment 32, which has to do with the continuing resolution.

Mr. GERALD R. FORD. Excuse me, Mr. Speaker, Would the Chair repeat that answer? A "yea" vote would strike out—

The SPEAKER pro tempore. The Clerk will re-read the motion.

The Clerk read as follows:

Mr. MAHON moves that the House recede from its disagreement to the amendment of the Senate numbered 32 and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert:

"SEC. 1003. Section 102 of the Act of November 14, 1969 (Public Law 91-117) as amended, is further amended by striking "the sine die adjournment of the first session of the Ninety-first Congress" and inserting in lieu thereof, "January 30, 1970"."

The question was taken; and there were—yeas 276, nays 99, not voting 58, as follows:

[Roll No. 352]

YEAS—276

Abernethy	Duncan	McEwen
Adair	Eckhardt	McFall
Adams	Edmondson	McKneally
Addabbo	Edwards, Ala.	McMillan
Albert	Edwards, La.	MacGregor
Alexander	Ellberg	Madden
Anderson, Ill.	Erlenborn	Mahon
Anderson, Tenn.	Esch	Mailliard
Annunzio	Eshleman	Mathias
Arendts	Evans, Colo.	Matsunaga
Ashley	Fallon	May
Ayres	Fascell	Mayne
Baring	Feighan	Meeds
Barrett	Fish	Melcher
Beall, Md.	Flood	Meskill
Belcher	Foley	Michel
Bell, Calif.	Ford, Gerald R.	Mikva
Bennett	Ford, William D.	Mills
Betts	Fraser	Minish
Biaggi	Frelinghuysen	Minshall
Bingham	Friedel	Mizell
Blatnik	Fulton, Pa.	Mollohan
Boggs	Fuqua	Monagan
Boland	Galifianakis	Moorhead
Bow	Gallagher	Morgan
Brademas	Garmatz	Morton
Brasco	Gaydos	Mosher
Brock	Gilbert	Murphy, Ill.
Brooks	Gray	Murphy, N.Y.
Brotzman	Green, Pa.	Myers
Brown, Mich.	Gubser	Natcher
Brown, Ohio	Gude	Nedzi
Broyhill, N.C.	Halpern	Nix
Broyhill, Va.	Hamilton	Obey
Buchanan	Hammer-	O'Hara
Burke, Mass.	schmidt	O'Konski
Burleson, Tex.	Hanley	Olsen
Burlison, Mo.	Hanna	O'Neill, Mass.
Burton, Calif.	Hansen, Wash.	Ottinger
Burton, Utah	Harrington	Passman
Bush	Hathaway	Patman
Button	Hays	Patten
Byrne, Pa.	Hechler, W. Va.	Pelly
Byrnes, Wis.	Heckler, Mass.	Pepper
Cabell	Helstoski	Perkins
Camp	Hicks	Pettis
Carter	Hogan	Philbin
Casey	Hollifield	Pirnie
Cederberg	Horton	Podell
Chamberlain	Hosmer	Pollock
Chisholm	Howard	Preyer, N.C.
Clark	Hunt	Price, Ill.
Clausen,	Jacobs	Pryor, Ark.
Don H.	Jarman	Purcell
Clay	Johnson, Calif.	Quillen
Collins	Jonas	Railsback
Conable	Jones, Ala.	Reid, Ill.
Conte	Jones, Tenn.	Reid, N.Y.
Corbett	Karth	Riegle
Corman	Kastenmeier	Rivers
Coughlin	Kee	Robison
Cramer	Keith	Rodino
Crane	King	Rooney, N.Y.
Culver	Kluczynski	Rooney, Pa.
Cunningham	Koch	Rosenthal
Daddario	Kuykendall	Roth
Daniels, N.J.	Kyros	Roudebush
Davis, Ga.	Latta	Ruppe
de la Garza	Lloyd	Ruth
Denney	Long, La.	Ryan
Derwinski	Long, Md.	St Germain
Dickinson	Lujan	St. Onge
Diggs	McCarthy	Sandman
Dingell	McCloskey	Saylor
Donohue	McCulloch	Scheuer
Dorn	McDade	Schneebeli
Downing	McDonald,	Schwengel
Dulski	Mich.	Scott
		Shipley

Slack	Tunney	Wiggins
Smith, Iowa	Udall	Williams
Springer	Ullman	Wilson, Bob
Stafford	Utt	Wilson,
Staggers	Vander Jagt	Charles H.
Stanton	Vanik	Winn
Stokes	Vigorito	Wold
Stubblefield	Waggonner	Wolff
Taft	Watson	Wyatt
Talcott	Watts	Wylie
Taylor	Whalen	Wyman
Teague, Calif.	Whalley	Yates
Thompson, Ga.	White	Yatron
Thompson, N.J.	Whitten	Young
Tiernan	Widnall	Zion

NAYS—99

Anderson, Calif.	Gross	Price, Tex.
Ashbrook	Grover	Pucinski
Biester	Hagan	Quie
Blackburn	Haley	Randall
Bray	Hansen, Idaho	Rarick
Brinkley	Harsha	Rhodes
Broomfield	Hastings	Roberts
Brown, Calif.	Hawkins	Roe
Burke, Fla.	Henderson	Rogers, Colo.
Chappell	Hungate	Rogers, Fla.
Clancy	Hutchinson	Roybal
Clawson, Del.	Ichord	Satterfield
Cleveland	Jones, N.C.	Schadeberg
Cohelan	Kazen	Scherle
Cowger	Kleppe	Sebellus
Daniel, Va.	Kyl	Shriver
Davis, Wis.	Landgrebe	Smith, N.Y.
Dellenback	Langen	Snyder
Dennis	Leggett	Steed
Devine	Lennon	Steiger, Ariz.
Dowdy	Lowenstein	Steiger, Wis.
Fisher	Lukens	Stratton
Flowers	McClure	Stuckey
Flynt	Macdonald,	Symington
Foreman	Mass.	Thomson, Wis.
Fountain	Mann	Van Deerin
Frey	Marsh	Waldie
Gettys	Miller, Ohio	Wampler
Giamo	Mink	Weicker
Gibbons	Mize	Whitehurst
Gonzalez	Nelsen	Wydler
Goodling	Nichols	Zablocki
Griffin	Pickle	Zwach
	Pike	

NOT VOTING—58

Abbitt	Edwards, Calif.	Morse
Andrews, Ala.	Evins, Tenn.	Moss
Andrews,	Farbstein	O'Neal, Ga.
N. Dak.	Findley	Poage
Aspinall	Fulton, Tenn.	Poff
Berry	Goldwater	Powell
Bevill	Green, Oreg.	Rees
Blanton	Griffiths	Reifel
Bolling	Hall	Reuss
Caffery	Harvey	Rostenkowski
Cahill	Hébert	Sikes
Carey	Hull	Sisk
Celler	Johnson, Pa.	Skubitz
Collier	Kirwan	Smith, Calif.
Colmer	Landrum	Stephens
Conyers	Lipscomb	Sullivan
Dawson	McClory	Teague, Tex.
Delaney	Martin	Watkins
Dent	Miller, Calif.	Wright
Dwyer	Montgomery	

So the motion was agreed to.

The Clerk announced the following pairs:

Mr. Miller of California with Mr. Lipscomb.
 Mr. Sisk with Mr. Smith of California.
 Mr. Celler with Mr. Morse.
 Mr. Evins of Tennessee with Mr. Watkins.
 Mrs. Griffiths with Mrs. Dwyer.
 Mr. Hébert with Mr. Hall.
 Mr. Moss with Mr. Andrews of North Dakota.
 Mr. Sikes with Mr. Harvey.
 Mr. Bevill with Mr. Goldwater.
 Mr. Caffery with Mr. Martin.
 Mr. Aspinall with Mr. Cahill.
 Mr. Rostenkowski with Mr. Collier.
 Mr. Abbitt with Mr. Poff.
 Mr. Fulton of Tennessee with Mr. Johnson of Pennsylvania.
 Mr. Delaney with Mr. Reifel.
 Mr. Hull with Mr. Skubitz.
 Mr. Dent with Mr. Findley.
 Mr. Colmer with Mr. Berry.

Mr. Carey with Mr. McClory.
 Mr. Andrews of Alabama with Mr. Montgomery.
 Mr. Conyers with Mr. Edwards of California.
 Mr. Blanton with Mr. O'Neal of Georgia.
 Mr. Farbstein with Mr. Dawson.
 Mrs. Green of Oregon with Mr. Landrum.
 Mr. Reuss with Mr. Powell.
 Mr. Stephens with Mr. Rees.
 Mrs. Sullivan with Mr. Teague of Texas.
 Mr. Wright with Mr. Kirwan.

The result of the vote was announced as above recorded.

The doors were opened.

The SPEAKER. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 33: On page 16, line 11, insert:

"Sec. 1004. In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute: *Provided*, That this section shall not be construed as affecting or limiting in any way the jurisdiction or the scope of judicial review of any Federal court in connection with the Budget and Accounting Act of 1921, as amended, or any other Federal law."

MOTION OFFERED BY MR. MAHON

Mr. MAHON. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MAHON moves that the House recede from its disagreement to the amendment of the Senate numbered 33 and concur therein.

The SPEAKER. For what purpose does the gentleman from New Jersey rise?

Mr. THOMPSON of New Jersey. Mr. Speaker, I ask that the question be divided. Mr. Speaker, I have a motion at the desk.

Mr. MAHON. Mr. Speaker, I do not yield for a motion at this time.

The SPEAKER. The gentleman from New Jersey demands a division?

Mr. THOMPSON of New Jersey. The gentleman does.

The SPEAKER. The question is, Will the House recede from its disagreement to the amendment of the Senate numbered 33?

PARLIAMENTARY INQUIRY

Mr. MACGREGOR. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. MACGREGOR. I should like to ask the Speaker if the time for debate on the motion of the gentleman from Texas (Mr. MAHON) is under the control of the gentleman from Texas and if it is in order for me at this time to ask the gentleman from Texas to yield to me for 5 minutes.

Mr. MAHON. I have agreed to yield to the gentleman from Minnesota for 5 minutes for the purpose of debate.

Mr. MACGREGOR. Am I recognized, Mr. Speaker?

The SPEAKER. The gentleman from Texas will be recognized for 1 hour,

but the question before the House now is on the motion of the gentleman from Texas that the House recede from its disagreement to the Senate amendment.

Mr. MAHON. Mr. Speaker, I yield to the gentleman from Minnesota for 5 minutes.

Mr. THOMPSON of New Jersey. Mr. Speaker, a parliamentary inquiry.

Mr. MAHON. Mr. Speaker, I do not yield for that.

The SPEAKER. The gentleman from Texas is recognized for 1 hour.

Mr. MACGREGOR. Mr. Speaker, will the gentleman from Texas yield 5 minutes to me?

Mr. MAHON. I yield 5 minutes to the gentleman from Minnesota.

The SPEAKER. The gentleman is recognized for 5 minutes.

Mr. MACGREGOR. Mr. Speaker and Members of the House, I rise in opposition to the pending motion with respect to the Senate rider which would kill the Philadelphia plan. I speak as a member of the House Committee on the Judiciary who was pleased to play a role in the draftsmanship and passage of title VII of the Civil Rights Act of 1964. The revised Philadelphia plan is not—I repeat, not—in conflict with any provision of the Civil Rights Act of 1964. It is a lawful implementation of the provisions of Executive Order 11246. It should be enforced in accordance with its terms in the award of Government contracts. The plan provides that the contractor's commitment to specific goals is not intended and shall not be used to discriminate against any qualified applicant or employee. Furthermore, the obligation to meet the goals set forth pursuant to the Philadelphia plan is not absolute. "In the event of failure to meet the goals the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment." That last sentence is a direct quote from the Philadelphia plan and the program. Now neither the Executive order nor the Philadelphia plan, which implements the order, with respect to certain construction contracts, regulates the practices of employers generally.

While the power of the Government to determine the terms which shall be included in its contracts is subject to limitations imposed by the Constitution or by acts of Congress, the existence of such power does not depend on an affirmative legislative enactment. In evaluating the Comptroller General's challenge to the Philadelphia plan on the basis of conflict with title VII of the Civil Rights Act, it is important to distinguish between those things prohibited by title VII as to all employers covered by that act, and those things which are merely not required of employers by that act. Therefore the United States as a contracting party may not require an employer to engage in practices which Congress has prohibited. It does not follow, however, that the United States may not require of those who contract with it certain employment practices which Congress has not seen fit to require of employers generally. Nothing in the Philadelphia plan requires an employer to violate section 703(a) (1) and

(2) of the Civil Rights Act of 1964. The employer's obligation is to make every good faith effort to meet his goals. A good faith effort does not include any action which would violate section 703 (a) or any other provision of title VII of the Civil Rights Act of 1964.

The Philadelphia plan addresses itself to a situation in which, according to the Department of Labor's findings, the contractors have in the past delegated an important part of the hiring function to labor organizations by selecting their work force on the basis of union referrals. The referral practices of certain unions, whether or not amounting to violations of title VII, have in fact contributed to the virtual exclusion of Negroes from employment in certain trades in the Philadelphia area. Continued reliance by contractors on established hiring practices may reasonably be expected to result in continued exclusion of Negroes. The purpose of the Philadelphia plan is to place squarely upon the contractor the burden of broadening his recruitment base whether within or without the existing union referral system, as he, the contractor, shall determine. The contractor's obligation is phrased primarily in terms of goals and not quotas; the choice of methods of employment is his, provided only that he does not discriminate against qualified employees or applicants. Unless it can be demonstrated that the hiring goals cannot be achieved without unlawful discrimination, I fail to see why the Government is not permitted to require a pledge of good faith efforts to meet them as a condition for the award of contracts.

Mr. Speaker, I cannot assume that any contractor who desires to participate in good faith in the Philadelphia plan will be forced, as a practical matter, to choose between noncompliance with his affirmative action obligation under the Executive order and violation of title VII. If unfairness in the administration of the plan should develop, it cannot be doubted by any Member of this House that judicial remedies are available.

We have heard here earlier in this debate that it is important that we uphold the dignity of this House by agreeing to the Senate rider. But let me point out a few things to you:

In essence, the Senate rider would grant judicial powers to the Comptroller General. It would give him the authority of a court in determining whether or not the Philadelphia plan violates the Constitution. I do not think the Comptroller General wants that authority. He should not have it. He is not a lawyer. He is not trained in the law. He is a brilliant accountant and a fine administrator. After completing his undergraduate studies he earned a Master's degree from Kansas and a Ph. D. from the University of Minnesota. None of these graduate degrees are in law.

I urge you not to give to the Comptroller General—who ought to be concerned with spending practices, not hiring practices—I urge you not to give him this judicial authority, but to leave it to the courts.

Finally, Mr. Speaker, Christmas is 3 days away and there is a temptation at

this time to appeal on the basis of compassion for those who have been denied equality of opportunity in any area. I make no such appeal. I ask you for justice, not compassionate pity, for those who are victims of discrimination.

It does not avail a man much to be guaranteed the opportunity to be served in a Howard Johnson restaurant—

The SPEAKER. The time of the gentleman has again expired.

Mr. MAHON. I yield 1 additional minute to the gentleman from Minnesota.

Mr. MacGREGOR. It does not avail a man much to be able to be served in Howard Johnson restaurants across the face of America, as indeed he now can do through the Civil Rights Act of 1964, if he does not have the money to pay for his meal.

It does not avail a man much to be able to buy a house, as our distinguished minority leader said, if he does not have a job to earn the money to pay for that house.

It does not avail a Negro American much if he has the equal right to see the Minnesota Vikings defeat the Los Angeles Rams next Saturday but lacks the money to buy a ticket.

A good job enables those discriminated against because of race to earn the money to enjoy all of the equal opportunities guaranteed by recent acts of Congress.

I ask you to let the Philadelphia plan go forward by defeating the motion offered by the gentleman from Texas. If the plan is offensive to the Constitution or laws of the United States, let that be decided ultimately in the Federal courts, not by the opinion of the Comptroller General.

The SPEAKER. The time of the gentleman from Minnesota has again expired.

Mr. MAHON. Mr. Speaker, I yield 4 minutes to the gentleman from Arizona (Mr. RHODES), a member of the conference.

(Mr. RHODES asked and was given permission to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, there has been much said today about whether or not this rider enlarges the power of the Comptroller General. I suggest to you that it enlarges his power almost beyond recognition. A look at the language which is relied upon from the Budget Act of 1921 for this enlargement shows that it reads like this:

Balances certified by the General Accounting Office on the settlement of public accounts shall be final, and conclusive upon the executive branch of the government.

I suggest that when you talk about "balances" you are talking about the postaudit functions of the Comptroller General. He has that function, and what he says about the accounts of the government indeed are final, there is no doubt about it. But let us look at the subject before us. We do not have a question of monetary balances, we have a question where the Comptroller General has very properly gone into a situation to see whether or not an act of Congress has actually been interpreted or administered as the Congress intended it. However, whether he believes this

proper or whether he does not believe it is proper I submit in this instance is not and should not be binding, and is not binding under the Budget and Accounting Act. It is not an opinion on accounts, it is not a postaudit, it is an opinion on the validity of the exercise of a power by the Executive, under the Civil Rights Act of 1964. It is, in reality, the determination of what the Congress intended when it enacted that law.

The Comptroller General has very properly given to the Congress a warning that its intent may have been misinterpreted. In exercise of its function of legislative oversight, the Congress should inquire of the executive department, whether or not it has in this instance properly administered the law. If it has not, we should see that it does so. The courts often make final determination on matters like this. When the Executive received the opinion of the Comptroller General, he very properly inquired of the Attorney General as to his opinion. In this case, the Attorney General said succinctly, "I disagree with the Comptroller General."

The next thing to be done of course is for the Congress either to decide between the two, in a proper form, a proper bill, or to let a court decide the matter. But at any stage of the whole discussion the Congress can take over and say, "look, do not put words in my mouth, Mr. Comptroller General—do not put words in my mouth, Mr. Court—here is what I meant when I passed that law." This is a thing that this Congress should do, and has done. But we cannot and should not delegate this authority.

This is a supplemental appropriation bill. This is no vehicle upon which we should determine the legislative intent of the Congress which passed the Civil Rights Act of 1964. Yet this is what we are being asked to do—to state whether or not when we passed the Civil Rights Act of 1964 we had in mind an arrangement such as the Philadelphia plan.

Mr. Speaker, let us let the Committee on the Judiciary, from which the Civil Rights Act of 1964 came, take this up under the function of legislative oversight and if necessary submit legislation to the House and clarify what our intent was at that time. I submit, however, that this is not the time and this is not the hour to take an action which is as far reaching as this one would be because, gentlemen and ladies of the House and Mr. Speaker, believe me you are setting up the Comptroller General of the United States as an arbiter, with power which is almost beyond precedent. I do not believe this is the time or this is the hour to do that particular job.

So I ask you, when the vote comes that you vote "no" on the motion of the gentleman from Texas.

Mr. MAHON. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. DENNIS) for the purpose of debate only.

Mr. DENNIS. Mr. Speaker, we are dealing here today with an important and fundamental question, which is, really, the question of the opportunity and the right of a man to learn a trade and make a living; and when the propo-

sition is put to me in those basic terms I have to vote for that right and for that opportunity.

Now, we have heard many eloquent statements here on the floor of the House about civil rights and civil liberties, and I hope that some of these eloquent voices will agree with me here today because they are so much more eloquent than I am. But in some of these matters there are very grave constitutional questions and social questions and conflicts of rights that are involved. Here we have a question which, although it is fundamental, is relatively simple. There is no great constitutional question here of the structure of our Federal Government or of the powers of the Federal Government and of the several States. There is just a question of the right of a man to go out and learn a trade and get a job. Stated simply the real issue is, should a man's race or color affect adversely his right and opportunity to do that? And I say that if the promise of this country means anything the answer to that question has to be "No"; and if our citizens and all of them are ever going to reach the plane of equality which I think they must reach if we are going to have peace and happiness in this country the answer to that question has to be "No."

The gentleman from Michigan said here a while ago that he wanted to see a colorless society in so far as employment and the right to employment is concerned—and I do too—in theory you should not have to legislate anything along these lines. In respect to employment it should not make any difference whether a man is black, brown, white, or checkered. But as a matter of fact, as we all know, it does.

So really the only question here today is whether it is proper for the Federal Government, the situation being as it is, to give a small amount of encouragement in its own contracts to its own citizens, in respect to their right to make a living.

I say our Government ought to be entitled to do that. Whatever the powers of the Comptroller General may be, they were never such as to create a dictatorship entitling him to tell the Federal Government that it cannot do a fundamental thing of that kind; and if any money is actually spent contrary to the Civil Rights Act, or any other act, the courts will determine that. So when you get right down and strip the verbiage away, it is just a question of whether or not the Federal Government, in its own contracts, can do a little something to help people have an economic opportunity and economic equality, and nothing else. And this House ought to be for that.

Mr. MAHON. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. FULTON).

Mr. FULTON of Pennsylvania. Mr. Speaker, this is a question of where two of our U.S. progressive policies contravene each other. One is civil rights and the other is the right of free collective bargaining. The question on civil rights does not go to the basic foundation of civil rights legislation, but is our method of proposed enforcement in one field, in one area of Government contracts.

I am glad to advise the House and the

Congress that I have voted for every civil rights bill that has passed the Congress during my service in Congress. In the 80th Congress, Senator Ives of New York and I cosponsored the Republican civil rights bill, commonly designated the Ives-Fulton civil rights bill. I am for civil rights, but will not break the basic principle of collective bargaining, on a point of limited enforcement. Already there is an Executive order of the President in force on this very subject. This is an added method of enforcement that is being considered.

I believe that Congress should not set the terms and conditions of contracts that should be arrived at by collective bargaining. Congress must protect the right of collective bargaining for voluntary contracts mutually agreed, and voluntarily complied with by the parties.

I have stood here almost alone when the question of compulsory arbitration for railroad workers arose and I have said, "No, the parties must bargain collectively, and the Federal Government should not move in and impose contract provisions on the parties by law." When the Government takes collective bargaining away from any section of industry, you take it away from everyone, and gradually Government spoils collective bargaining procedures.

In my estimation, I believe the AFL-CIO and local unions should bargain. I do not want quota systems or any procedure that will assign in various sections of the country a purely white labor force and in some sections a mixed force, and in other sections a completely colored labor force. Quotas are not the solution.

We in Pittsburgh have had a confrontation on this question and we have learned not to settle our collective bargaining procedures by Government or groups force. Our people, the AFL-CIO, the building trades, are voluntarily working out this problem. We ask you in Congress to give our good labor unions the time to work this out by consent and not to force us by law, shutting off good collective bargaining procedures.

Mr. MAHON. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. HAWKINS).

(Mr. HAWKINS asked and was given permission to revise and extend his remarks, and to include extraneous material.)

Mr. HAWKINS. Mr. Speaker, in opposing today this rider to the supplemental appropriation bill which will kill the so-called Philadelphia plan, I cannot in good conscience believe the issue of equal employment opportunities is being presented to us by the administration in the constructive and forthright manner such a concept deserves. I am willing to encourage, however, what may be its first sign of repentance.

The alleged purpose of the administration's Philadelphia plan is to place more Negroes in skilled construction work. It is proposed that approximately 20 percent of the work force be hired in the next 4 years. This is stated as a goal rather than a quota, thereby in the opinion of the administration it is not a

violation of the Civil Rights Act which forbids hiring on a racial quota basis.

The provision inserted by the Senate would forbid Government spending on "any contract which the Comptroller General of the United States holds to be in contravention of any Federal statute." Since such a ruling has already been made on the Philadelphia plan, this plan is naturally the focus of controversy.

Basically the administration has made the Philadelphia plan its program of providing more jobs for Negroes. Serious questions may be raised as to its reason. Why should minority employment be limited in effect to a single industry? And, why only to certain cities in the first instance? If it is in furtherance of Executive order, why has the order not been invoked before?

If in fact the administration supports the concept of affirmative action in ending racial discrimination in employment, why has it failed to use the tools clearly available under law?

The Office of Contract Compliance in the Department of Labor is charged with policing nondiscrimination in Government contracts. Yet earlier this year the Department of Defense chose to ignore this office by awarding over \$9 million of contracts in the textile industry to companies that had a history of discriminatory hiring practices.

The Federal Equal Employment Opportunity Commission also has some powers in "affirmative action" employment which have not been utilized even to the limited extent available. As a matter of fact, the Department of Justice with support from the Commission is even now in a position to move in ending discrimination in three major industries—motion pictures, communications, and aerospace—involving Federal contracts but apparently seems more interested in confining its civil rights attention to a single industry under the Philadelphia plan.

The administration has a golden opportunity to obtain strong powers, including affirmative action, under the EEOC part of the Civil Rights Act, title VII, by supporting a bill which Mr. OGDEN REID of New York, and I have introduced to give cease and desist power to this Federal Commission. Incidentally, a similar bill is pending in the Senate backed by 35 sponsors. The administration, however, prefers to confuse the issue with a new and different approach unsupported by a single civil rights authority or organization.

A few weeks ago the administration sought to dilute the Voting Rights Act on the basis of extending its coverage nationally, although the problem was clearly limited to certain States. Now the same administration seeks to narrowly confine its civil rights posture in a limited area although the problem is clearly national.

The Philadelphia plan is designed to implement Executive Order 11246, 1965, issued by President Johnson and forbidding discrimination in employment by Federal contractors. But prohibition of discrimination is not enough. Positive action is now necessary.

Under the Philadelphia plan, the government in opening jobs for competitive bidding will require bidders to state their

plans for meeting certain goals based primarily on new job openings and to show good faith in reaching the goals.

Such a plan certainly is one of the many tools suited for opening up new and better jobs in industry. Its application, however, should be national in scope and extended to all industries as a showing of good faith and expression of fairness. And it must be understood that this plan is only one, and not necessarily the best of the tools for opening opportunities.

It is, therefore, difficult to understand the inconsistency of this administration in the civil rights field and its ejection of political favoritism.

If, however, the administration is willing to assume the national leadership for correction of one of our major urban ills, racial discrimination, I am willing to support it as long as it moves ahead consistently and uncompromisingly.

Let it then, push on to removing discrimination against three out of every four black children who attend segregated schools instead of supporting a slowdown in school desegregation.

Let it reverse itself and now support us on a strong Voting Rights Act.

Let it move in to support of a strong Equal Employment Act, and to ending discrimination in employment in its own executive departments.

Then, we can truly make the Philadelphia plan an American plan.

Mr. Speaker, I include a letter on this subject:

WASHINGTON, D.C.,
December 22, 1969.

HON. JOHN MCCORMACK,
Speaker, U.S. House of Representatives,
Washington, D.C.:

In order that the record may be clear I am sending this wire to confirm the fact that we had a conversation in your office with Mr. Carl Albert and Mr. O'Hara on Friday, December 19, concerning the so-called Philadelphia Plan rider that was attached to the supplemental appropriations bill in the Senate. The NAACP is opposed to this rider as we have opposed similar riders to the appropriations bill in other fields. I am deeply shocked to learn that the Nixon Administration is seeking to convey the impression that civil rights groups are not opposed to this amendment.

It is amazing that the same administration which has sought to destroy the voting rights bill, which is against strengthening existing equal employment opportunity legislation, which has been guilty of outrageous footdragging in school desegregation, now suddenly is on a great crusade to save the Philadelphia Plan. It is very odd that at the beginning of the year the administration was perfectly willing to let the textile industry continue employment discrimination by reaching a dubious unwritten agreement with the big employers of that highly discriminating industry, but now is enthusiastically cracking down on discrimination that involves labor unions. The NAACP opposes all kinds of racial discrimination whether by employers or labor unions. Now that the Nixon Administration is giving such vigorous defense to the Philadelphia Plan, we hope it will show equal zeal in supporting the Hawkins-Reid bill on strengthening EEOC.

We urge the defeat of the rider attached to the Senate bill, but I personally would like to have this telegram serve as a record of the fact that the Administration spokesmen who said we have not acted against it simply are not telling the truth.

CLARENCE MITCHELL,
Director, Washington Bureau, NAACP.

Mr. REID of New York. Mr. Speaker, will the gentleman yield?

Mr. HAWKINS. I yield to the gentleman from New York, (Mr. REID).

Mr. REID of New York. Mr. Speaker, I commend the gentleman from California (Mr. HAWKINS) for his statement, and I urge support for the Philadelphia plan, the position the Secretary of Labor has taken, and a "no" vote on the motion of the gentleman from Texas.

This is a key vote for an effective road to racial justice and in support of equal employment opportunity.

Further, as a cosponsor with the gentleman from California (Mr. HAWKINS) of legislation to give the Equal Employment Opportunity Commission cease-and-desist powers, I would strongly hope that Members will support that legislation at an appropriate time as well.

GENERAL LEAVE

Mr. MAHON. Mr. Speaker, I ask unanimous consent that all Members may revise and extend their remarks at this point in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. MAHON. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. PEPPER).

Mr. PEPPER. Mr. Speaker, I merely want to say we lawyers know there is an old saying in the law that hard cases make bad law. Assuming there is no political motivation behind the action of the administration, it would then be a case whether or not the law that gave to the Comptroller General since his inception in 1921 his authority to determine the propriety of governmental payments is to be set aside by the opinion of an Attorney General appointed by the President under the authority of an Executive order even to achieve a desirable result.

What is the source of the authority of the Executive order?

This conflict was not initiated by this House or by the other body. What happened was, if Members recall, the Department of Labor put into effect in Philadelphia in Government contracts the Philadelphia plan. The Comptroller General held that plan was in contravention of the Civil Rights Act of 1964.

Did the administration come to Congress and ask for an amendment of the authority of the Comptroller General or of the Civil Rights Act of 1964?

On the contrary, the Attorney General held under the Executive order of the President the Department of Labor act contrary to the Civil Rights Statute of 1964. By this provision we are simply protecting the authority of the Comptroller General under the statute we enacted in 1921 except as the courts may hold to the contrary.

Mr. MAHON. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. CORMAN) for debate only.

(Mr. CORMAN asked and was given permission to revise and extend his remarks.)

Mr. CORMAN. Mr. Speaker, the fundamental issues are the same, it seems to me, and the words are almost the same

on this as on every other civil rights matter. Last week we took up on the floor of this House the fundamental right of Americans to participate in government. Now we are talking about their right to participate in the economy of this Nation.

Mr. Speaker, I very much hope we defeat the motion and speak out loudly and clearly in support of racial justice. As the gentleman from California (Mr. HAWKINS) pointed out, I, too, was pleased to see we had support this week we did not have last week. When I listened to the distinguished minority leader I felt very much like a father who welcomes home his prodigal son as told in the biblical parable:

When the prodigal son returned his father said: "Bring quickly the best robe and put it on him; and put a ring on his hand, and shoes on his feet, and bring the fattest calf and kill it, and let us eat and make merry; for this my son was dead, and is alive again; he was lost, and is found."

Mr. Speaker, I have not checked yet to see how long the prodigal son stayed home. I hope this one stays home for the rest of the 91st Congress.

Mr. GERALD R. FORD. Mr. Speaker, I hope the gentleman from California (Mr. CORMAN) would give me the same consideration and I hope he treats me with the same consideration as he gave the gentleman from Michigan (Mr. O'HARA) when that gentleman quoted Father Hesburgh last week, but this week the gentleman from Michigan (Mr. O'HARA) is going contrary to the good father's recommendation.

Mr. CORMAN. Mr. Speaker, my heart, which was healed in one respect was broken in another when I heard the other gentleman from Michigan make the statement he did. However, I have no fear that the gentleman from Michigan (Mr. O'HARA), who has been a consistent and effective champion of civil rights during all the 9 years it has been my privilege to serve with him, will continue those efforts.

Mr. MAHON. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. GERALD R. FORD) for debate only.

Mr. GERALD R. FORD. Mr. Speaker, I take this time only for the purpose of seeking to clarify the vote on the motion by the gentleman from New Jersey to divide the motion.

A "no" vote on the motion to recede is a vote for the Philadelphia plan, and for equal job opportunity. If that motion does not prevail, then a motion will be made to insist on the House disagreement with the Senate. That motion, if it prevails, will mean that the House will have sought to strip from the conference report the Senate rider.

If the motion to recede prevails with an "aye" vote—to which I am opposed—then a motion to concur with an amendment would be in order. I believe it is far better to have the issue straight up or down, rather than the alternative. Therefore, I hope and trust those who believe in equal job opportunity will vote "no" on the motion to recede.

Mr. MAHON. Mr. Speaker, I yield, for debate only, 3 minutes to the gentleman from New Jersey (Mr. THOMPSON).

Mr. THOMPSON of New Jersey. Mr. Speaker, earlier, when the distinguished chairman of the committee moved to recede and concur, I asked that the question be divided. Therefore, there will be, as the gentleman from Michigan (Mr. GERALD R. FORD) described it, an opportunity to vote for or against receding.

Before concurring, I have an amendment which ought to be extremely attractive to the champions of equal employment opportunities.

The issue before us is confined for the moment to Philadelphia. My amendment says:

"Provided, That no holding of the Controller General that a contract or agreement is in contravention of title VII of the Civil Rights Act of 1964 shall have any effect until he shall have examined and reported upon the employment practices of the J. P. Stevens Company, Burlington Mills and Dan River Mills for compliance with said title VII."

This is simple. I want to extend this equal opportunity to the thousands and thousands of textile workers who, by the admission of those three major employers, are being discriminated against. I want the great friends of civil-rights to be consistent, to broaden this to include another great industry or indeed all industries. That simply is what I hope to do when the time comes to concur.

Mr. GERALD R. FORD. Mr. Speaker, will the gentleman yield?

Mr. THOMPSON of New Jersey. I yield to my friend from Michigan.

Mr. GERALD R. FORD. I somewhat anticipated the gentleman from New Jersey might offer such an amendment or raise the issue, and I have a communication from the Secretary of Labor that the executive branch has written agreements from the textile plants involved and is getting full compliance and regular reports. I believe, therefore, there is no necessity for the gentleman's amendment.

Mr. THOMPSON of New Jersey. Would the gentleman tell me the date of that letter?

Mr. GERALD R. FORD. I received this communication some time this afternoon. I assume that it is up to date as of today.

Mr. THOMPSON of New Jersey. I hope that the gentleman is right.

Mr. GERALD R. FORD. The Secretary tells me it is accurate, and I happen to believe he has done his job.

Mr. THOMPSON of New Jersey. I am certain he does his job. The Comptroller General does his job. The Attorney General does his. Yet they are at loggerheads.

I have evidence here from the Secretary of Defense that there is no compliance, and yet the Secretary of Labor says there is. I have a file here an inch thick showing noncompliance.

The gentleman should have no objection to my amendment if they are complying. I wish he would accept it.

Mr. MAHON. Mr. Speaker, I yield, for debate only, 3 minutes to the gentleman from New York (Mr. RYAN).

(Mr. RYAN asked and was given permission to revise and extend his remarks.)

Mr. RYAN. Mr. Speaker, I rise in opposition to the motion which will be

offered by the distinguished chairman of the Committee on Appropriations to recede and concur in section 1004, Senate amendment numbered 33.

The distinguished chairman earlier this afternoon said that this was not a civil rights issue. I do not know what else it is but a civil rights issue. This question goes to the very fundamental question of the right of an individual to a job, to gainful employment, without regard to race, creed, or color.

It also goes to the heart of the President's Executive Order 11246 which prohibits discrimination on the part of those who have contracts with the Federal Government.

That Executive order has not been effectively implemented. The Philadelphia plan is a small step, but an important step, toward the implementation of that Executive order.

The conference report on the Supplemental Appropriations Act, H.R. 15209, has been amended by the Senate to include Senate amendment No. 33—section 1004. The amendment is in disagreement.

Amendment No. 33 would deny the use of Federal funds "to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute." Despite its broad language, the Senate debate shows the intent of this amendment—blocking of the so-called Philadelphia plan.

The revised Philadelphia plan was issued on June 27 of this year. Its purpose is to implement Executive Order 11246, which bans discrimination in Federal employment and in the hiring practices of Federal contractors, and which mandates affirmative action to ensure nondiscriminatory employment practices, by establishing goals for contractors to seek to reach in hiring minority group members.

I have long been critical of the failure of the Government to fully implement Executive Order 11246. The ad hoc hearings which I and several of my colleagues held last year on discrimination in Federal employment and on the failure to enforce contract compliance pointed out to me the long way we must yet travel, and the strong affirmative actions that must yet be taken before discrimination in hiring and promotion is overcome.

The Philadelphia plan is one small step in this direction. In brief, the plan establishes employment goals for contractors on Federal or federally-assisted construction projects in Philadelphia. As issued by Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards, Department of Labor:

In order to promote the full realization of equal employment opportunity on Federally-assisted projects, it is the policy of the Office of Federal Contracts Compliance that no contracts or subcontracts shall be awarded for General and Federally-assisted construction in the Philadelphia area on projects whose cost exceeds \$500,000 unless the bidder submits an acceptable affirmative action program which shall include specific goals of minority manpower utiliza-

tion, meeting the standards included in the invitation or other solicitation for bids, in trades utilizing the following classifications of employees: Iron workers, plumbers, pipefitters, steamfitters, sheetmetal workers, electrical workers, roofers and water proofers, and elevator construction workers.

The premise behind this policy is that the construction trade relies on the construction craft unions as its prime or sole source of labor, and that, because of the exclusionary policies of these unions, minority member employees are excluded from working on construction projects.

Although several HEW contracts have successfully been negotiated in accordance with the Philadelphia plan's prescriptions, full implementation has largely been stymied by an adverse opinion of the Comptroller General. He has held that funds expended for contracts entered into in accordance with the plan would be expended illegally.

This conclusion is based on his reading of the plan as setting quotas for minority group members' employment in contravention of title VII of the 1964 Civil Rights Act.

At this time I do not propose to engage in legal debate over the merits of the Comptroller General's conclusion. The Attorney General has already done that; it is his position that the Philadelphia plan is legal. He does not read "goals," which the plan is directed at, as "quotas." Nor does he read good faith efforts to take affirmative action as meaning exclusion of qualified white workers.

The distinction is drawn by the editorial appearing in the Washington Post on December 22, 1969:

A quota is a specific, fixed figure nominated in a contract and binding upon its parties; the goals contemplated in the Philadelphia Plan are elastic aims agreed upon as feasible and desirable in individual situations, toward the attainment of which contractors pledge themselves to make a "good faith" effort. They constitute simply a reaching toward decency and fairness.

Mr. Speaker, thus far, the administration both by action and by inaction, has shown a distressing disregard for the poor and for the black people of America. There can be no clearer testimony to this than its substitute for an extension of the Voting Rights Act, which the House passed, over my opposition, less than 2 weeks ago. However, where there is merit, it must be recognized, and the Philadelphia plan is a step in the right direction and should not be destroyed. For too long we have been content to pass legislation which purports to extend opportunity to all. And for too long we have stood by as that purported opportunity proves to be a chimera—attractive in conception, defective in implementation. Discrimination in hiring and promotion still exists; access to well paying, skilled jobs is still very limited when it is the black man or the Spanish-speaking citizen who seeks them.

The report published by the Civil Rights Commission in April 1969, and entitled "Jobs and Civil Rights" makes this clear:

Every year, for the past thirteen years, the unemployment rate for nonwhites has been twice that for whites. Even with optimistic expectations for the future of the economy, government statisticians currently project that "the 1975 unemployment rate for nonwhites would still be twice that for the labor force as a whole." Moreover, when an adjustment is made for the undercount by the Census Bureau of the nonwhite population of working age, the spread between unemployment rates for nonwhites and whites widens.

Besides entry level discrimination, there is also a vertical or skill-level aspect of job inequality for nonwhites. In many industries, the jobs held by nonwhites are less desirable, requiring less skill and paying lower wages, than the jobs held by whites. 1966. According to Arthur M. Ross, former Commissioner of Labor Statistics, they are under-represented in the occupations with smaller percentages (all the white collar and skilled-labor categories) and over-represented in those with larger percentages (all the semi-skilled, unskilled, and service activities except for protective service workers, as well as farm laborers).

Statistics recently revealed by the Equal Employment Opportunity Commission further underline how essential the need is to change current employment patterns. William H. Brown III, Chairman of EEOC, released results on September 28, 1969, of a survey made of 3,700 local unions throughout the country, reflecting their membership in 1967.

These figures do not isolate the situation in Philadelphia alone, but that is not the real issue before us. The Philadelphia story is not an atypical one. And the figures from across the country show how devastating the story is.

Chairman Brown discussed minority membership in referral unions, which he defined as unions with hiring halls, unions which have agreements with employers requiring the employers to consider or hire persons referred by the union or any agent of the union; and unions which have 10 percent or more of their members employed by employers who customarily and regularly look to the union for the employees to be hired on a casual or temporary basis, for a specified period of time or for the duration of a specific job.

Of the 2 million members of these 3,700 local unions having referral bargaining units, 10 percent were black, 6 percent had Spanish surnames, 1 percent were orientals, and .5 percent were American Indians.

These figures are certainly disheartening. Even though the 10 percent figure for blacks is in line with the national population proportions, the disparity becomes apparent when one considers that most black workers are, in practice, largely excluded from white collar jobs, and thus must look to blue-collar jobs for their employment.

Even more discouraging are these figures, when they are broken down to consider only the construction industry unions. These unions account for five-eighths, or 1.3 million, of the 2 million union members in referral bargaining units. Of these 1.3 million, only 106,000—8.4 percent—are blacks and only 56,000—4.5 percent—are Spanish surnamed. Thus, these percentages are even lower

than the aggregate figures I have previously noted.

And of these 106,000 blacks, 81,000, or about 75 percent, are laborers. In the skilled occupations, the percentages are bleak:

[In percentages]

	Blacks	Spanish surnamed
Electrical workers.....	0.6	1.8
Elevator constructors.....	0.4	1.3
Asbestos workers.....	0.9	1.2
Plumbers.....	0.2	1.4
Sheetmetal workers.....	0.2	(¹)

¹ Not available.

Mr. Speaker, these statistics are 2 years old, but as Chairman Brown noted:

(It) is most likely that these minority membership figures of two years ago are generally representative of the situation existing today. Even the most optimistic expectations for the Apprenticeship Outreach programs and other attempts to enroll minorities in apprenticeship programs only affect a small proportion of referral union membership.

Clearly the need is great. Clearly, the time is late. I have spoken of the merits of the Philadelphia plan, and of the statistics—statistics which represent blacks and Indians and Puerto Ricans who are being foreclosed from hope and from opportunity—which make this, and many other, firmer steps essential now.

But even if the issue is to be framed in terms of the language of Senate Amendment No. 33, how can we let such an amendment pass? To me, it is most disturbing for the Comptroller General to become the judicial body determinative of a matter of such great national significance. Surely, the Civil Rights Act of 1964 is not to be the judicial preserve of this nonjudicial office.

If the Comptroller General, as the Senate amendment would permit him to do it, is given the authority to nullify the Philadelphia plan, then he would have the authority, it must follow, to nullify any other affirmative action plan which is initiated by the Federal Office of Contract Compliance. In other words, the Comptroller General would have a complete veto power over the action of any department or agency head who acts under authority of the President of the United States to implement Executive Order 11246.

If there is a constitutional question as to whether or not the Philadelphia plan contravenes title VII of the Civil Rights Act of 1964, then that issue should be determined by the judiciary. That is the proper place for that question to be decided.

Adoption of the Senate amendment would be tantamount to turning over the equal employment program of the Federal Government to the Comptroller General.

In matters of technical contract matters, the Comptroller General serves well as the Congress' watchdog over the funds which we have appropriated. But there his sphere must stop.

What is left for the Office of Federal Contract Compliance to do, for compliance officers to do, if the Comptroller General is to assess each contract to determine whether the affirmative action plan of the contracting agency, which

the Executive order compels, is in his view, in contravention of any Federal statute.

If the Comptroller General can block the Philadelphia plan by ruling that funds expended for contracts in pursuance of it would be expended illegally, so can he block all efforts to rectify discrimination in employment. This must not be permitted.

The SPEAKER. The time of the gentleman from New York has expired.

Mr. MAHON. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. ECKHARDT).

(Mr. ECKHARDT asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Speaker, I favor permitting the use of the Philadelphia plan.

I grasp this small forceps even though it has been in the hands of the other party and there are many larger tools and more effective ones that they have eschewed.

I agree with the able chairman of the committee that this is not altogether just a civil rights matter, but it seems to me that under the proposed agreement with the Senate the Comptroller General becomes a master of the House and not its servant.

Under the original act, the 1921 act, the Comptroller General can determine as a matter of auditing for the House the extent to which transactions have been consummated in accordance with the laws, but under the bill that is before us, if we accept the Senate viewpoint, then the Comptroller General turns the faucet through which funds flow.

The SPEAKER. The time of the gentleman from Texas has expired.

Mr. MAHON. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. HOLIFIELD) for the purpose of debate only.

(Mr. HOLIFIELD asked and was given permission to revise and extend his remarks.)

Mr. HOLIFIELD. Mr. Speaker, why did this question arise? The question arose because the Attorney General and the Comptroller General are in conflict over the jurisdiction of the Comptroller General. That is why it arose.

The Comptroller General for 50 years, under the Budgeting and Accounting Act, has been given the following authority, and I read:

Balances certified by the General Accounting Office upon the settlement of public accounts shall be final and conclusive upon the Executive Branch of the Government—

Not on the contractor, Mr. Speaker, but upon the executive branch of the Government. In other words, you pay the bill if the Comptroller General says you pay it and you do not pay it if he says you do not. That is as far as the executive branch is concerned.

Because of this fight, this section 1004 reads as follows:

In view of and in confirmation of the authority invested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly

or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute:

This is a confirmation of the rights and the privileges and the authority which the Comptroller General has been exercising for 50 years. Then the question arose in the other body as to whether this language went too far and that it gave the Comptroller General additional authority far beyond what he was supposed to have had and exercised. Then the gentleman from West Virginia, Senator BYRD, offered this amendment:

Provided, That this section shall not be construed as affecting or limiting in any way the jurisdiction or the scope of judicial review of any Federal court in connection with the Budget and Accounting Act of 1921, as amended, or any other Federal law.

So, this does not affect the right of a litigant to go into court and get a judgment set aside which has been made by the Comptroller General, provided the Comptroller General has not made that decision in line with the intent and purpose of the statute which the Congress has enacted.

That is what the fight is about. The Labor Department represented by Mr. Schultz and the Attorney General, Mr. Mitchell have now said that the Philadelphia plan is the only way they can enforce the Civil Rights Act of 1964 in regard to job opportunities. And, of course, as the people on the floor who are on the Education and Labor Committee know—and I see one of the gentlemen standing—this is untrue.

If they want to enforce the job opportunities provisions against discrimination which are contained in the Civil Rights Act they can use that statute which is already on the books, I will state to the gentleman from Illinois.

Mr. PUCINSKI. Mr. Speaker, if the gentleman will yield, the gentleman is telling the House now that there is nothing in this bill that precludes any agency of the executive branch from going into court and testing the decision of the Comptroller General?

Mr. HOLIFIELD. The gentleman is right insofar as litigants are concerned.

Mr. Speaker, I ask that the Members support the gentleman from Texas and his motion.

Mr. MAHON. Mr. Speaker, permission will be sought for all Members to extend their remarks in connection with the pending issue.

Anyone reading this RECORD might think that we have been debating the question of whether or not we should adopt the Philadelphia plan. But the question before us is not the Philadelphia plan. The Philadelphia plan is not mentioned, is not singled out in any way in the wording of the Senate amendment. The question before us is the supremacy of the Congress over the executive branch in deciding the purposes for which appropriations may or may not be used, whether expenditures shall be within the law or outside the law. This is the vital question. The power of the purse is the one certain and continuing power by which the Congress, as a representative of the people, controls the operations of Government.

It is unthinkable that we would do anything that would in any way militate against the authority which the Constitution gives us to control appropriations, and the authority which for almost 50 years we have given to our agent, the Comptroller General, to decide whether or not expenditures by the executive branch are in compliance with the applicable laws. All the amendment does is to reaffirm—in view of the dispute which has arisen—the authority of the Comptroller General to determine whether or not the expenditures of the Government are within the laws of the land. That is all there is to it.

It seems to me that it is wrong to throw a red herring in the form of civil rights into the discussion. There may be some practices of certain of the labor unions that are not good. I would not say that there has not been some discrimination in the labor unions. Congress has the authority to undertake to legislate in this field if it desires to do so. But that is not the issue before us today. The simple question is, shall we support the General Accounting Office and its chief officer, the Comptroller General, who represents the Congress of the United States in determining whether or not the money we appropriate is to be spent in accord with the applicable laws. The executive branch has challenged his decision on the so-called Philadelphia plan, and has indicated it will proceed despite the ruling that it would be an illegal expenditure.

So I would hope that, regardless of one's views on the Philadelphia plan—and if the Congress wants to adopt such legislation, that is a matter for Congress to decide—but regardless of one's own opinion on that, I hope that we will take action here today reasserting congressional control of the Federal purse.

The SPEAKER. The time of the gentleman has expired.

Mr. MIKVA. Mr. Speaker, I was pleased to see Americans for Democratic Action take an unequivocal position in favor of the Philadelphia plan. In a telegram to the leadership of this House, Joseph L. Rauh, Jr., vice chairman of the ADA and one of the great names in civil rights history, made clear ADA's position. As he pointed out, this is no time for retreat in such an important area of the civil rights front.

The text of the telegram to Speaker JOHN W. MCCORMACK and Majority Leader CARL ALBERT follows:

Americans for Democratic Action strongly urges you to support efforts to delete from Supplemental Appropriation bill the rider outlawing Philadelphia and similar affirmative action plans. Only strong governmental action can reverse long history of exclusion of blacks from construction industry. Philadelphia Plan offers greatest hope for minority employment in skilled construction work. To dash that hope at this time by rider barring this Plan would be to heap coals on the fires of racial tension. This is worst possible time for such retreat on the civil rights front. We trust you will lead the House of Representatives away from such retreat.

JOSEPH L. RAUH, JR.,
vice chairman, ADA.

Mr. ANDERSON of Illinois. Mr. Speaker, I shall vote "no" on the motion of the gentleman from Texas (Mr. MAHON) to

recede and concur in Senate amendment No. 904 which would have the effect of imposing a death sentence on the so-called Philadelphia plan. I have been shocked and surprised at some erstwhile supporters of civil rights who have sought in vain to explain their dislike for a plan to admit blacks to the building trades unions from which they have heretofore been barred because of crass discrimination. I received Mr. George Meany's wire in which he professes his attachment to equality of opportunity in employment and yet finds the rider to the Supplemental Appropriations bill acceptable because "quota systems are illegal, un-American, and in and of themselves discriminatory." This, of course, begs the question. The Secretary of Labor and others have pointed out that under the Philadelphia plan we are dealing with goals, not arbitrary fixed quotas.

In the current issue of Harpers, Bayard Rustin has written an article entitled "Black Separatism." In it he concludes that the future economic welfare of the black man depends upon a perpetuation of the ancient coalition between the trade unions and the Democratic Party. Mr. Speaker with such notable exceptions as the gentleman from Minnesota (Mr. FRAZER), the gentleman from California (Mr. CORMAN), the gentleman from Indiana (Mr. JACOBS), and a few others, that coalition has not served the black man very well on the floor of this House this evening.

Look at the situation in the Philadelphia area. Thirty percent of all those engaged in the construction industry are members of a minority group, but only 1.6 percent are privileged to be members of the six skilled trades such as plumbers, pipefitters, electricians, and sheet metal workers. The obvious purpose of these selfish, shortsighted craft unions has been to constrict the labor supply at a time when we need hundreds of thousands of new skilled building craftsmen to meet our Nation's housing goals.

I hope the amendment of the gentleman from Texas (Mr. MAHON) is defeated.

Mr. MAHON. Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

The SPEAKER. The gentleman from New Jersey (Mr. THOMPSON) demanded a division on the motion made by the gentleman from Texas (Mr. MAHON).

The question is on the motion offered by the gentleman from Texas (Mr. MAHON) that the House recede from its disagreement to the amendment of the Senate numbered 33.

The question was taken; and on a division (demanded by Mr. MAHON) there were ayes 83, noes 125.

Mr. MAHON. Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 156, nays 208, answered "present" 1, not voting 68, as follows:

[Roll No. 353]

YEAS—156

Abernethy
Addabbo
Alexander
Anderson,
Tenn.

Ashbrook
Baring
Bennett
Biaggi
Blackburn

Bray
Brinkley
Brooks
Brown, Calif.
Broyhill, N.C.

Broyhill, Va.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Cabell
Casey
Chappell
Clancy
Clark
Clawson, Del.
Collins
Corbett
Cramer
Crane
Daniel, Va.
Daniels, N.J.
Davis, Ga.
de la Garza
Denney
Derwinski
Devine
Dingell
Donohue
Dorn
Dowdy
Downing
Duncan
Edmondson
Ellberg
Fisher
Flood
Flowers
Flynt
Ford,
William D.
Foreman
Fountain
Frey
Fulton, Pa.
Fuqua
Galifianakis
Gaydos
Gettys
Gialmo
Gray
Griffin
Gross
Grover
Hagan

Haley
Hansen, Wash.
Harsha
Hays
Henderson
Hicks
Holifield
Hungate
Ichord
Jarman
Johnson, Calif.
Jonas
Jones, Ala.
Jones, N.C.
Jones, Tenn.
Karth
Kazen
Kee
King
Kluczynski
Kyros
Lennon
Long, La.
Long, Md.
McDonald,
Mich.
McFall
McMillan
Macdonald,
Mass.
Mahon
Mann
Marsh
Melcher
Minshall
Mizell
Mollohan
Monagan
Morgan
Murphy, Ill.
Myers
Natcher
Nedzi
O'Hara
O'Konski
Olsen
Passman
Patman
Pepper

Perkins
Philbin
Pickle
Pryor, N.C.
Pryor, Ark.
Pucinski
Purcell
Quillen
Randall
Rarick
Rivers
Roberts
Roe
Rogers, Fla.
Rooney, Pa.
Roudebush
Ruth
St Germain
St. Onge
Satterfield
Scherle
Scott
Shipley
Slack
Smith, Iowa
Snyder
Steed
Steiger, Ariz.
Stubblefield
Stuckey
Symington
Taylor
Thompson, Ga.
Tiernan
Ullman
Vigorito
Waggonner
Wampler
Watson
Watts
Whitehurst
Whitten
Wiggins
Williams
Yatron
Young
Zablocki

NAYS—208

Adams
Albert
Anderson,
Calif.
Anderson, Ill.
Annunzio
Arends
Ashley
Ayres
Barrett
Beall, Md.
Belcher
Bell, Calif.
Betts
Blester
Bingham
Blatnik
Boggs
Boland
Bow
Brademas
Brasco
Broomfield
Brotzman
Brown, Mich.
Brown, Ohio
Buchanan
Burke, Fla.
Burton, Calif.
Bush
Button
Byrne, Pa.
Byrnes, Wis.
Camp
Carter
Cederberg
Chamberlain
Chisholm
Clausen,
Don H.
Clay
Cleveland
Cohelan
Conable
Conte
Corman
Coughlin
Cowger
Culver
Cunningham
Daddario
Davis, Wis.
Dellenback

Dennis
Dickinson
Diggs
Dulski
Eckhardt
Edwards, Ala.
Erlenborn
Esch
Eshleman
Evans, Colo.
Feighan
Fish
Foley
Ford, Gerald R.
Fraser
Frelinghuysen
Friedel
Gallagher
Garmatz
Gibbons
Gilbert
Gonzalez
Goodling
Green, Pa.
Gubser
Gude
Halpern
Hamilton
Hanley
Hanna
Hansen, Idaho
Harrington
Hastings
Hathaway
Hawkins
Hechler, W. Va.
Heckler, Mass.
Helstoski
Hogan
Horton
Hosmer
Howard
Hunt
Hutchinson
Jacobs
Kastenmeier
Keith
Kleppe
Koch
Kuykendall
Kyl
Landgrebe
Langen

Latta
Leggett
Lloyd
Lowenstein
Lujan
Lukens
McCarthy
McCloskey
McCulloch
McDade
McEwen
McKneally
MacGregor
Madden
Mailliard
Mathias
Matsunaga
May
Mayne
Meeds
Meskill
Michel
Mikva
Miller, Ohio
Minish
Mink
Mize
Moorhead
Morton
Mosher
Murphy, N.Y.
Nelsen
Nix
Obey
O'Neill, Mass.
Ottinger
Patten
Pelly
Pettis
Pike
Pirnie
Podell
Price, Ill.
Price, Tex.
Quie
Rallsback
Reid, Ill.
Reid, N.Y.
Rhodes
Riegle
Robison
Rodino

Rogers, Colo.	Staggers	Whalen
Rooney, N.Y.	Stanton	Whalley
Rosenthal	Steiger, Wis.	White
Roth	Stokes	Widnall
Roybal	Stratton	Wilson, Bob
Ruppe	Taft	Wilson,
Ryan	Talcott	Charles H.
Sandman	Teague, Calif.	Winn
Saylor	Thompson, N.J.	Wold
Schadeberg	Thomson, Wis.	Wyatt
Scheuer	Tunney	Wydler
Schneebell	Udall	Wyllie
Schwengel	Utt	Wyman
Sebelius	Van Deerlin	Yates
Shriver	Vander Jagt	Zion
Smith, N.Y.	Vanik	Zwach
Springer	Waldie	
Stafford	Weicker	

ANSWERED "PRESENT"—1

Pollock

NOT VOTING—68

Abbitt	Edwards, La.	Montgomery
Adair	Evins, Tenn.	Morse
Andrews, Ala.	Fallon	Moss
Andrews,	Farbstein	Nichols
N. Dak.	Fascell	O'Neal, Ga.
Aspinall	Findley	Poage
Berry	Fulton, Tenn.	Poff
Bevill	Goldwater	Powell
Blanton	Green, Oreg.	Rees
Bolling	Griffiths	Reifel
Brock	Hall	Reuss
Burton, Utah	Hammer-	Rostenkowski
Caffery	schmidt	Sikes
Cahill	Harvey	Sisk
Carey	Hébert	Skubitz
Celler	Hull	Smith, Calif.
Collier	Johnson, Pa.	Stephens
Colmer	Kirwan	Sullivan
Conyers	Landrum	Teague, Tex.
Dawson	Lipscomb	Watkins
Delaney	McClory	Wolff
Dent	Martin	Wright
Dwyer	Miller, Calif.	
Edwards, Calif.	Mills	

So the motion was rejected.

The Clerk announced the following pairs:

On this vote:

Mr. Montgomery for, with Mr. Pollock against.

Mr. Hébert for, with Mr. Reuss against.

Mr. Andrews of Alabama for, with Mr. Hammerschmidt against.

Mr. Bevill for, with Mr. Conyers against.

Mr. Nichols for, with Mr. Farbstein against.

Mr. O'Neal of Georgia for, with Mr. Celler against.

Until further notice:

Mr. Colmer with Mr. Goldwater.

Mr. Evins of Tennessee with Mr. Brock.

Mr. Fallon with Mr. Watkins.

Mr. Miller of California with Mr. Lipscomb.

Mr. Mills with Mr. Hall.

Mr. Hull with Mr. Burton of Utah.

Mr. Powell with Mr. Edwards of California.

Mr. Rostenkowski with Mr. Collier.

Mr. Edwards of Louisiana with Mr. Skubitz.

Mr. Fulton of Tennessee with Mr. Findley.

Mrs. Green of Oregon with Mr. Cahill.

Mr. Rees with Mr. Reifel.

Mr. Sikes with Mr. Martin.

Mr. Stephens with Mr. Berry.

Mr. Carey with Mr. Morse.

Mr. Sisk with Mr. Smith of California.

Mr. Teague of Texas with Mr. Adair.

Mrs. Sullivan with Mrs. Dwyer.

Mr. Landrum with Mr. Andrews of North Dakota.

Mr. Moss with Mr. Harvey.

Mr. Abbitt with Mr. Poff.

Mr. Delaney with Mr. Cahill.

Mrs. Griffiths with Mr. McClory.

Mr. Dent with Mr. Johnson of Pennsylvania.

Mr. Aspinall with Mr. Blanton.

Mr. Dawson with Mr. Kirwan.

Mr. Wolff with Mr. Wright.

Messrs. GARMATZ and ROONEY of New York changed their vote from "yea" to "nay."

Mr. POLLOCK. Mr. Speaker, I have

a live pair with the gentleman from Mississippi (Mr. MONTGOMERY). If he had been present he would have voted "yea." I voted "nay." I withdraw my vote and vote "present."

The result of the vote was announced as above recorded.

The doors were opened.

MOTION OFFERED BY MR. BOW

Mr. BOW. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bow moves that the House insist on its disagreement to the amendment of the Senate numbered 33.

The SPEAKER. The question is on the motion offered by the gentleman from Ohio (Mr. Bow).

The motion was agreed to.

A motion to reconsider the votes by which action was taken on the conference report and on the several motions was laid on the table.

GENERAL LEAVE

Mr. MAHON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks in the RECORD on the conference report and motions.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

COMPOSITION OF COMMITTEE ON EDUCATION AND LABOR

Mr. ALBERT. Mr. Speaker, I offer a privileged resolution (H. Res. 764) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That during the remainder of the Ninety-first Congress, the Committee on Education and Labor shall be composed of thirty-seven members.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

Mr. PUCINSKI. Mr. Speaker, reserving the right to object—

The SPEAKER. The Chair will state that this is a privileged matter.

Is there objection to the request of the gentleman from Oklahoma?

Mr. WAGGONER. Mr. Speaker, reserving the right to object—

The SPEAKER. The Chair will state that this is a privileged matter.

Mr. WAGGONER. Mr. Speaker, then I object.

The SPEAKER. Objection is heard.

COMMUNICATION FROM S. DILLON RIPLEY, SECRETARY, SMITHSONIAN INSTITUTION

The SPEAKER laid before the House the following communication from S. Dillon Ripley, Secretary, Smithsonian Institution:

SMITHSONIAN INSTITUTION,
Washington, D.C., December 4, 1969.
Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C. 20515

DEAR MR. SPEAKER: On the occasion of the address to the Houses of Congress by the crew of Apollo 11, we understand that two

United States flags were presented to you and the Vice President. These flags were carried aboard the Apollo 11 to the Moon and back.

We would like very much to display one of these two flags in our Hall of Flags in the museum of History and Technology. Would a loan of one flag be possible? We would, of course, document in the label the presentation to the House of Representatives and its loan to the Smithsonian Institution.

The millions of visitors each year to the Smithsonian will be inspired by seeing this symbolic display. It is our hope, therefore, that you will find it possible to approve this loan.

Sincerely yours,

S. DILLON RIPLEY,
Secretary.

AUTHORIZING SMITHSONIAN INSTITUTION TO DISPLAY U.S. FLAG PRESENTED BY APOLLO 11 ASTRONAUTS

Mr. ALBERT. Mr. Speaker, I offer a resolution (H. Res. 765) and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 765

Whereas, Commander Neil A. Armstrong, Colonel Michael Collins, and Colonel Edwin E. Aldrin, Jr., Apollo XI astronauts, were received by the House of Representatives and the Senate in a Joint Meeting on September 16, 1969;

Whereas, Colonel Aldrin, on behalf of the Apollo XI astronauts, presented to the House one of the two United States flags that had been flown over the Capitol, and taken on Apollo XI on the epic moonlanding mission when man first trod the surface of the moon;

Whereas, The Speaker of the House of Representatives, the Honorable John W. McCormack, in accepting the flag on behalf of the House, assured the Apollo XI astronauts that every care and caution would be taken to safeguard this treasured possession; and

Whereas, The Smithsonian Institution has expressed its desire to display this flag in the Hall of Flags in the Museum of History and Technology: Now, therefore, be it

Resolved, That the Sergeant at Arms of the House of Representatives is authorized and directed, on behalf of the House of Representatives, to loan the United States flag presented to the House by the Apollo XI astronauts to the Smithsonian Institution, under procedures which will assure its proper documentation, preservation, display and return, *Provided, however*, That said flag shall be returned to the House of Representatives on or before June 1, 1970.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

Mr. FULTON of Pennsylvania. Mr. Speaker, reserving the right to object, as ranking minority member of the House Science and Astronautics Committee, and also ranking member on the Manned Space Flight Subcommittee, my question is first for how long is this loan?

I might say so far as the wording of the resolution is concerned, "loan" is a noun and "lend" is the verb. So it would be very nice to have it read—lend the flag—instead of loan it.

How long is this loan to be for? I favor lending the flag to the Smithsonian for a definite period, but not indefinitely. I am very interested in this flag taken to the moon by Apollo 11 astronauts, as I was the member who purchased the flag



Public Law 91-166
91st Congress, H. R. 15209
December 26, 1969

An Act

83 STAT. 447

Making supplemental appropriations for the fiscal year ending June 30, 1970,
and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following Supplemental sums are appropriated out of any money in the Treasury not otherwise Appropriation appropriated, to supply supplemental appropriations (this Act may Act, 1970. be cited as the "Supplemental Appropriation Act, 1970") for the fiscal year ending June 30, 1970, and for other purposes, namely:

CHAPTER I

DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

FLOOD PREVENTION

For an additional amount for "Flood prevention", for emergency measures for runoff retardation and soil erosion prevention, as provided by section 216 of the Flood Control Act of 1950 (33 U.S.C. 701 64 Stat. 184. b-1), \$3,700,000, to remain available until expended.

RELATED AGENCY

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

In addition to the amount made available under this heading for administrative expenses during the current fiscal year, \$211,000 shall be available from assessments for such expenses, including the hire of one passenger motor vehicle.

CHAPTER II

INDEPENDENT OFFICES

CIVIL SERVICE COMMISSION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$430,000, for necessary expenses of the retirement and insurance programs, to be transferred from the trust funds "Civil Service retirement and disability fund", "Employees life insurance fund", "Employees health benefits fund", and "Retired employees health benefits fund", in such amounts as may be determined by the Civil Service Commission.

FEDERAL LABOR RELATIONS COUNCIL

SALARIES AND EXPENSES

For expenses necessary to carry out functions of the Civil Service Commission under Executive Order No. 11491 of October 29, 1969, \$300,000: *Provided*, That public members of the Federal Service Impasses Panel may be paid travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government service, and compensation 34 F. R. 17605. 80 Stat. 499; Ante, p. 190.

at the rate of not to exceed \$100 per day when engaged in the performance of the Panel's duties.

COMMISSION ON GOVERNMENT PROCUREMENT

SALARIES AND EXPENSES

For necessary expenses of the Commission on Government Procurement, \$700,000, to remain available until June 30, 1972.

NATIONAL COMMISSION ON CONSUMER FINANCE

SALARIES AND EXPENSES

For expenses necessary to carry out the provisions of Title IV of the Act of May 29, 1968 (Public Law 90-321), \$375,000.

82 Stat. 164.
15 USC 1601
note.

CHAPTER III

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For an additional amount for "Management of lands and resources", \$1,250,000.

BUREAU OF INDIAN AFFAIRS

EDUCATION AND WELFARE SERVICES

For an additional amount for "Education and welfare services", \$6,000,000.

OFFICE OF TERRITORIES

TRUST TERRITORY OF THE PACIFIC ISLANDS

For an additional amount for "Trust Territory of the Pacific Islands", \$7,500,000, to remain available until expended.

GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For an additional amount for "Surveys, investigations, and research", \$700,000.

BUREAU OF MINES

HEALTH AND SAFETY

For an additional amount for expenses necessary to improve health and safety in the Nation's coal mines, \$12,000,000: *Provided*, That this paragraph shall be effective only upon the enactment into law of S. 2917, 91st Congress.

BUREAU OF SPORT FISHERIES AND WILDLIFE

MANAGEMENT AND INVESTIGATIONS OF RESOURCES

For an additional amount for "Management and investigations of resources", \$310,000.

CONSTRUCTION

For an additional amount for "Construction", \$2,300,000, to remain available until expended.

NATIONAL PARK SERVICE

MANAGEMENT AND PROTECTION

For an additional amount for "Management and Protection", \$50,000.

MAINTENANCE AND REHABILITATION OF PHYSICAL FACILITIES

For an additional amount for "Maintenance and Rehabilitation of Physical Facilities", \$50,000, for reconstruction of certain streets in Harpers Ferry, West Virginia.

RELATED AGENCIES

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

INDIAN HEALTH SERVICES

For an additional amount for "Indian Health Services", \$2,048,000.

CONSTRUCTION OF INDIAN HEALTH FACILITIES

For an additional amount for "Indian Health Facilities", \$1,952,000, to remain available until expended.

NATIONAL COUNCIL ON INDIAN OPPORTUNITY

SALARIES AND EXPENSES

For expenses necessary for the National Council on Indian Opportunity, including services as authorized by 5 U.S.C. 3109, \$286,000. 80 Stat. 416.

SMITHSONIAN INSTITUTION

THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

For additional expenses, not otherwise provided, necessary to enable the Board of Trustees of the John F. Kennedy Center for the Performing Arts to carry out the purposes of the Act of September 2, 1958 (72 Stat. 1698), as amended, including construction, to remain available until expended, such amounts which in the aggregate will equal gifts, bequests, and devises of money, securities and other property received by the Board for the benefit of the John F. Kennedy Center for the Performing Arts under such Act, not to exceed \$7,500,000. Ante, p. 135.

CHAPTER IV

DEPARTMENT OF LABOR

WAGE AND LABOR STANDARDS ADMINISTRATION

Ante, p. 96. For expenses necessary to implement the Federal Construction Safety Act of 1969 (Public Law 91-54), \$1,000,000.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CONSUMER PROTECTION AND ENVIRONMENTAL HEALTH SERVICES

ENVIRONMENTAL CONTROL

For expenses necessary to improve health and safety in the Nation's coal mines, \$10,000,000: *Provided*, That this paragraph shall be effective only upon the enactment into law of S. 2917, 91st Congress.

CHAPTER V

LEGISLATIVE BRANCH

SENATE

SALARIES, OFFICERS AND EMPLOYEES

OFFICE OF THE VICE PRESIDENT

For an additional amount for "Office of the Vice President", \$24,966.

HOUSE OF REPRESENTATIVES

For payment to Justina Ronan, mother, and to Eileen Burke and Betty Dlouhy, sisters, of Daniel J. Ronan, late a Representative from the State of Illinois, \$42,500, one-half to the mother and one-quarter each to the sisters.

CHAPTER VI

DEPARTMENT OF STATE

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

INTERNATIONAL CONFERENCES AND CONTINGENCIES

For an additional amount for "International conferences and contingencies", \$350,000, to be derived by transfer from the appropriation for "Contributions to International Organizations", fiscal year 1970: *Provided*, That \$150,000 of the foregoing amount shall be transferred and available only on enactment into law of S.J. Res. 90, 91st Congress, or similar legislation.

Ante, p. 443.

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses, Immigration and Naturalization Service", \$869,000.

BUREAU OF NARCOTICS AND DANGEROUS DRUGS

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses, Bureau of Narcotics and Dangerous Drugs", \$700,000.

DEPARTMENT OF COMMERCE

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$618,000.

FACILITIES, EQUIPMENT, AND CONSTRUCTION

For an additional amount for "Facilities, equipment, and construction", \$1,040,000, to remain available until expended.

MARITIME ADMINISTRATION

STATE MARINE SCHOOLS

For an additional amount for "State Marine Schools" for the Michigan State Maritime Academy, \$50,000.

RELATED AGENCY

SMALL BUSINESS ADMINISTRATION

DISASTER LOAN FUND

For additional capital for the "Disaster loan fund", authorized by the Small Business Act, as amended, \$175,000,000, to remain available without fiscal year limitation. 72 Stat. 384.
15 USC 631 note.

UNITED STATES SECTION OF THE UNITED STATES-MEXICO COMMISSION
FOR BORDER DEVELOPMENT AND FRIENDSHIP

SALARIES AND EXPENSES

For necessary expenses of the United States Section of the United States-Mexico Commission for Border Development and Friendship, including expenses for liquidating its affairs, \$159,000, to be available from July 1, 1969, and to remain available until January 31, 1970.

CHAPTER VII

DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

OPERATING EXPENSES

For an additional amount for "Operating expenses", \$1,000,000.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, construction, and improvements", \$1,200,000, to remain available until expended.

CHAPTER VIII
TREASURY DEPARTMENT

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$600,000.

BUREAU OF CUSTOMS

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", including hire of passenger motor vehicles and aircraft; purchase of an additional one hundred and forty-eight passenger motor vehicles for police-type use without regard to the general purchase price limitation for the current fiscal year; and purchase of an additional seven aircraft, \$8,750,000.

UNITED STATES SECRET SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses," including purchase of an additional forty-two motor vehicles for police-type use without regard to the general purchase price limitation for the current fiscal year, \$4,000,000: *Provided*, That this paragraph shall be available only upon enactment into law of H.R. 14944, 91st Congress, or similar legislation.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

For expenses necessary for the Office of Intergovernmental Relations, \$120,000: *Provided*, That this appropriation shall be available only upon enactment into law of S.J. Res. 117, 91st Congress, or similar legislation.

PRESIDENT'S ADVISORY COUNCIL ON EXECUTIVE ORGANIZATION

SALARIES AND EXPENSES

For necessary expenses of the President's Advisory Council on Executive Organization, including compensation of members of the Council at the rate of \$100 per day when engaged in the performance of the Council's duties, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed \$100 per diem, and employment and compensation of necessary personnel without regard to the civil service and classification laws and the provisions of 5 U.S.C. 5363-5364, \$1,000,000, of which \$500,000 shall be for repayment to the appropriation for "Emergency fund for the President", fiscal year 1970.

80 Stat. 416.

80 Stat. 473.

INDEPENDENT AGENCY

TAX COURT OF THE UNITED STATES

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$65,000.

CHAPTER IX

CLAIMS AND JUDGMENTS

For payment of claims settled and determined by departments and agencies in accord with law and judgments rendered against the United States by the United States Court of Claims and United States district courts, as set forth in Senate Document Numbered 91-48, and in House Document Numbered 91-199, Ninety-first Congress, \$25,021,852, together with such amounts as may be necessary to pay interest (as and when specified in such judgments or provided by law) and such additional sums due to increases in rates of exchange as may be necessary to pay claims in foreign currency: *Provided*, That no judgment herein appropriated for shall be paid until it shall become final and conclusive against the United States by failure of the parties to appeal or otherwise: *Provided further*, That unless otherwise specifically required by law or by the judgment, payment of interest wherever appropriated for herein shall not continue for more than thirty days after the date of approval of the Act.

CHAPTER X

GENERAL PROVISIONS

SEC. 1001. During the current fiscal year, restrictions contained within appropriations, or provisions affecting appropriations or other funds, limiting the amounts which may be expended for expenses of travel, or for purposes involving expenses of travel, or amounts which may be transferred between appropriations or authorizations available for or involving expenses of travel, are hereby increased to the extent necessary to meet increased per diem costs authorized by Public Law 91-114, approved November 10, 1969.

Ante, p. 190.

SEC. 1002. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Fiscal year
limitation.

SEC. 1003. Section 102 of the Act of November 14, 1969 (Public Law 91-117), as amended, is further amended by striking "the sine die adjournment of the first session of the Ninety-first Congress" and inserting in lieu thereof, "January 30, 1970".

Continuing appro-
priations, 1970.
Ante, pp. 193,
292.

Approved December 26, 1969.

(over)

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-747 (Comm. on Appropriations) and
No. 91-780 (Comm. of Conference).

SENATE REPORT No. 91-616 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 115 (1969):

Dec. 11: Considered and passed House.

Dec. 18: Considered and passed Senate, amended.

Dec. 22: House and Senate agreed to conference report.